

DÁIL ÉIREANN

AN COMHCHOISTE UM AIRGEADAS, CAITEACHAS POIBLÍ AGUS ATHCHÓIRIÚ, AGUS AN TAOISEACH

JOINT COMMITTEE ON FINANCE, PUBLIC EXPENDITURE AND REFORM, AND TAOISEACH

Dé Máirt, 23 Eanáir 2018

Tuesday, 23 January 2018

Tháinig an Comhchoiste le chéile ag 4 p.m.

The Joint Committee met at 4 p.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Peter Burke,	Paddy Burke,
Pearse Doherty,	Rose Conway-Walsh,
Michael McGrath,	Gerry Horkan,
Paul Murphy.	Kieran O'Donnell.

I láthair / In attendance: Senator Paul Daly.

Teachta / Deputy John McGuinness sa Chathaoir / in the Chair.

Business of Joint Committee

Chairman: We begin our meeting in public session but will go into private session to deal with some housekeeping matters.

The joint committee went into private session at 4.04 p.m. and resumed in public session at 4.25 p.m.

Tracker Mortgages: Allied Irish Banks

Chairman: We will now resume in public session to debate the tracker mortgage redress issue. I welcome Mr. Bernard Byrne, CEO of Allied Irish Banks, AIB and his colleagues to the meeting. I must advise the witnesses that by virtue of section 17(2)(1) of the Defamation Act 2009, they are protected by absolute privilege in respect of their evidence to this committee. However, if they are directed by the committee to cease giving evidence on a particular matter and continue to do so, they are entitled thereafter only to qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable.

I invite Mr. Byrne to make his opening remarks.

Mr. Bernard Byrne: I thank the Chairman and members of the committee for inviting AIB here today. We are here to provide the committee with an update on the tracker mortgage issue, the progress to date and the work being done to bring this to a conclusion for our impacted customers. I am joined today by members of my executive team, Mr. Jim O’Keeffe, Mr. Robert Mulhall and Mr. Tom Kinsella

Since 26 September 26 when we last discussed the tracker mortgage issue with this committee, there has been ongoing and understandable public and political criticism of the banking industry’s handling of the matter. In the course of that debate, many questions have been raised about how we got to this point. Fundamentally there are three areas where key questions arise. The first is how the problem arose, the second is how the bank has responded and the third is the current status.

In terms of how the problem arose, it is helpful at the outset to articulate the circumstances, as we understand them, that existed at the time the original decision was made. The tracker mortgage product was introduced in 2002 at a time when wholesale market funding for banks was readily available and referenced off European Central Bank, ECB, rates. The tracker product had its interest rate based on ECB rates, plus an appropriate margin. As the 2008 financial crisis devastated economies globally, banks across many countries, including Ireland, were experiencing severe liquidity difficulties and the wholesale markets effectively closed or radically repriced credit causing the dislocation of funding from the ECB rate. Faced with this reality, AIB, initially in the second quarter of 2008, began to increase the tracker product mar-

gin. Things moved very rapidly and a month after the collapse of Lehman Brothers and the introduction of the Government guarantee scheme, the tracker product had very quickly become unsustainable. The tracker as a new product offering became redundant due to the scale of the margin increase required to reflect the rising cost of funding. The decision which was taken in late 2008 was to no longer make the product available for new customers. In other words, tracker mortgages were no longer offered to new customers but remained in place for those already holding one. Contrary to a widely held view, approximately 104,000 AIB and Educational Building Society, EBS, customer accounts, which at the time of the decision were on tracker mortgages were not affected by this decision and retained their rate. The unforeseen and unintended consequence of this decision was that certain customers who held a tracker product at some point previously but had already moved off the tracker product prior to this decision were not able to revert to the tracker product. It is clear that the potential fallout of the decision to stop offering the tracker product to new customers was not considered in terms of how existing customers might be impacted in the future, as some of these customers had a right to revert to a tracker product. This clearly should not have happened.

In terms of how the bank responded, the differential that would later develop between the bank's standard variable rate, SVR, and historical tracker mortgage rates and the unprecedented duration of the historically low ECB rates clearly amplified the initial error. In addition, the difficulty was compounded by limited legacy IT systems and operational failures in AIB and EBS when it merged with AIB in 2011. The systems did not record the bank's proper commitments and obligations to its customers. While the failure to consider the impact on customers was not deliberate, it is a failure that should not have happened and we apologise for this. Where complaints occurred, they were initially infrequent and were dealt with by the bank on an individual basis as each arose. Legal advice and the initial outcome of cases taken to the ombudsman supported the bank's position. With the benefit of hindsight, this was a too bank-centred approach.

In August 2015, following the identification of a particular issue involving certain EBS customers, and in the context of wider industry developments at the time, an analysis of the tracker issue was conducted within AIB. We commenced a significant programme of work which ultimately scaled up to 500 bank personnel dedicated to the programme. The bank over time conducted an analysis of circa 650,000 accounts to establish what we were dealing with. From the outset, we conducted our review by looking at contractual obligations but also examined whether proper levels of transparency and information were made available to customers that would enable them to make appropriate decisions in their own best interests. We sought to establish how the product was designed, administered and ultimately discontinued.

Issues identified included contractual breaches and-or unclear marketing, as well as process weaknesses. Eventually, more than 30 different customer groupings were recognised as impacted across AIB and EBS. Thus it became apparent that while we wanted to build early momentum in the programme, we would not be able to arrive at a one-size-fits-all solution. Essentially, impacted customers fell into three broad categories: those not on a tracker rate but who were entitled to revert to a tracker; those who remained on a tracker rate but were incorrectly charged a higher margin for a period of time; and those who were never on a tracker rate but who had a contractual option to be offered a prevailing tracker rate at the end of their fixed rate period.

On the basis of what we believed to be the scale of the problem, the bank set aside a provision of €190 million to cover the anticipated costs involved. We worked to ensure full compliance with the Central Bank framework that issued in December 2015, which included a fully

independent third party review and an appeals process. We submitted to the Central Bank in 2016 our approach to rate rectification and compensation. Since then, we have continued to implement that programme, completing all the required steps under the Central Bank of Ireland framework.

Members will have seen from information provided directly to the committee and from other recent bank statements that by the end of quarter 1 2018, all 3,509 customers who were identified as not on the tracker rate as they should have been will be redressed and compensated. Approximately 96% of these been completed. By the end of quarter 1 2018, all 939 customers incorrectly charged a higher margin for a period of time – most impacted by less than €500 – will be redressed and compensated. A total of 81% have been completed. For these categories, customer accounts have been returned to their own historic tracker mortgage rate. In addition, as noted in our December 2017 review, the following are now included and will be redressed: by the end of quarter 1 2018, the customers who were never on a tracker mortgage - our initial estimate of 4,000 was published in December - but who could not avail of one because it was withdrawn, will each receive compensation of €1,000 plus €615 towards independent advice. This group was included in the review in December 2017. By the end of quarter 2, a further 900 customers will be reverted to their own tracker rate and will be redressed and compensated.

I fully accept the need for real urgency in bringing this issue to a close, most especially in the interests of the impacted customers. AIB continues to focus very significant energy and resources to ensure we reach a conclusion as quickly as possible. The bank has many challenges and opportunities as we face into 2018. Resolution of this tracker issue is clearly a priority. I am not in a position to make any new financial disclosures today as we are in a close period, but in our trading update issued in December, the bank reported that it is on track to deliver a full year financial performance materially in line with market expectations.

As I have said to the committee previously, AIB is deeply conscious of the adverse effect this issue has had on impacted customers. Many people are angry as a result of the treatment they encountered and I apologise again for this on behalf of the bank. AIB's culture and reputation can only stand on the foundation of fair treatment for the customer. Where we fall short of this standard, it undermines our values and the credibility of the bank. We cannot allow that as we seek to put the interests of our customers first and to rebuild the bank and its reputation. We will continue to work hard until the programme is finished and we intend to reach that point by mid-2018. Customers are assured that payments they receive under the redress scheme will not compromise their right to appeal and, therefore, we can reasonably expect that cases might flow on from this for some time after the date we have indicated. However, AIB, for its part, will have concluded the overwhelming majority of its redress and compensation programme within months.

I thank the committee again for inviting us and we look forward to questions.

Deputy Michael McGrath: I welcome Mr. Byrne and his colleagues and I thank him for his opening statement. I would like to recap the overall picture and link that to the first part of the statement as to how this happened in the first place. A total of 96% of the first large cohort of approximately 3,500 customers identified by the bank have been redressed and compensated. They were once on a tracker, came off it, and then at the end of the fixed rate period were not offered a tracker again. Is that broadly what happened to that cohort?

Mr. Bernard Byrne: There is a mix of issues but, broadly, those customers had at some point a tracker and they moved on to something else.

Deputy Michael McGrath: They were on one at some point.

Mr. Bernard Byrne: Then something happened in the system. For the purpose of this discussion, I think that is fine.

Deputy Michael McGrath: A margin issue affected the cohort of 939.

Mr. Bernard Byrne: Correct.

Deputy Michael McGrath: In some cases, they were only affected for a few days.

Mr. Bernard Byrne: Yes, it varied. On average, it was a modest issue in the scheme of it but it was the wrong margin. A higher margin was charged to those customers.

Deputy Michael McGrath: Let us call the remaining 4,000 customers the prevailing rate cohort and I will come to that shortly. Adding all these cohorts together gives a total of 9,348, but is that customers or accounts?

Mr. Bernard Byrne: Customers.

Deputy Michael McGrath: Of those, the prevailing rate cohort has not been paid while the margin issue cohort of 939 will be paid by June of this year meaning the vast bulk of the first two categories have been paid. Perhaps 140 of the 3,500 cohort have not been paid and 178 of the 939 cohort. Overall, approximately 5,200 have not yet been redressed or compensated. Is that fair to say?

Mr. Bernard Byrne: Yes, of the 9,348.

Deputy Michael McGrath: I refer to Mr. Byrne's explanation for how the problem arose. He said that in late 2008 the bank withdrew the tracker product and "the unforeseen and unintended consequence of this decision was that certain customers, who held a tracker product at some point previously but had already moved off the tracker product prior to this decision, were not able to revert to the tracker product". While that was unintended and unforeseen, they had a contractual entitlement to revert to a tracker, the terms of which were defined in their contract. How could the bank have thought at that time that because it had withdrawn a tracker product that those customers, whose contracts stated they had the right to return to a tracker product, would not be so entitled? How could that be "unforeseen and unintended"?

Mr. Bernard Byrne: Because it was not thought about. As we have gone through each cohort, we have tried to look at the underlying circumstances that gave rise to these issues. What we have done in respect of that is go back and, ultimately, one had to back to what was the decision to exit the tracker product. The decision that was made in 2008 was to take away the tracker product for new customers. That was a discrete decision. There was no consideration based on what we can see of consequences of that decision elsewhere. The decision was around whether the tracker product would remain for new customers. That was the decision that was clearly made at that point in time and, as I have mentioned, another aspect of that - and this just flowed from it - was that any customer who was on a tracker stayed on a tracker. There were 104,000 customers.

Deputy Michael McGrath: But the customers had a pre-existing contractual commitment and the bank took the view that the clause fell when it withdrew the tracker product.

Mr. Bernard Byrne: That was a consequence of that decision because it was not thought

through. When we look back at that period - and we are looking back at what exists in respect of documentation because I was not there at the time - that is what we see. There was not a decision set that talks about those individual customers or that talked through the portfolio. We have mentioned to the committee that there was a series of process failures and a series of diligence failures in terms of understanding the obligations that existed for those customers, looking at them, and tracking and monitoring them. They did not exist.

Deputy Michael McGrath: Is there any evidence of a discussion within the bank on the issue or any consideration given to it? Was it identified at the time as being a risk or something that would need to be examined? AIB was ending the tracker product, but it had thousands of customers who were not on a tracker at the time but who had a contractual entitlement to return to a tracker. Was that issue not even thought of or considered to the extent that Mr. Byrne can look back and-----

Mr. Bernard Byrne: No.

Deputy Michael McGrath: AIB states in its questionnaire that it has identified 14 customers who lost their homes. How were they compensated?

Mr. Bernard Byrne: We spoke about the loss of up to 14 homes a number of meetings ago. I might ask Mr. O’Keeffe to talk the Deputy through that process.

Mr. Jim O’Keeffe: The identification of customers who lost their homes is done on the basis of looking at what rate they would have been on had they been on the tracker rate. In addition, we look at their affordability to see if customers would have been able to afford that rate. The homes that were lost were all sales as opposed to repossessions, so they would have gone through a forbearance process and identified the sale of the property. In identifying that grouping, we identified the tracker rate, calculated the affordability of the customer and, to allow flexibility, we built in 15% extra affordability because of the nature of the issue we were facing. We looked at what was the most favourable forbearance option that could have been provided to the customer so that we minimised the repayment amount as much as we could. If we put them through the forbearance structure, what we would then get to would be the minimum repayment amount versus the maximum affordability that we could find related to it. On that basis, we would compensate and we take a series of actions relating to the compensation. There is the refund of any overpayments on the account itself and the account was rebuilt right back to the date on which the error occurred. Transaction statements are rebuilt line by line so that we put it back exactly as it was.

Deputy Michael McGrath: Have those cases been resolved to the satisfaction of the customers?

Mr. Jim O’Keeffe: Those cases have been resolved. The majority were resolved in 2016 and two were resolved in 2017. Two appeals relating to it came through. Those appeals went through the independent appeals panel. As the Deputy knows, AIB does not have a member on the independent appeals panel. Those appeals were not upheld at the appeals panel. Following that, there were further discussions with the people who appealed.

Deputy Michael McGrath: Two cases went to appeal and-----

Mr. Jim O’Keeffe: Were not upheld.

Deputy Michael McGrath: -----may still be outstanding in some form.

Mr. Jim O’Keeffe: We are following the independent appeals panel’s decision, which was not to find in favour of the customer. We are now looking at those cases.

Deputy Michael McGrath: It is impossible for any of us who have not been in that situation to understand what those people went through. The least that they deserve is to get a home that they are satisfied with and is of a similar standard to what they had. That does not compensate them for what they went through but I think that the bank needs to ensure that all those cases are resolved fully to the satisfaction of the customers.

Mr. Bernard Byrne: We acknowledge that money is not a remedy for all of the issues but is the solution we are looking at in the confines we have. In looking at and deriving compensation for this particular grouping, we look at the future value of the tracker which they lost, so there is a compensation payment for that. There is a compensation payment for the loss of value on the property that would have arisen had they managed to hold the property during that period. There is a write-down of any residual debt associated with it, compensation for time value of money and general compensation on top of that. It is based on people being in a property of a similar position to the compensation value that is derived and then clearing out any other obligations. I am not saying that is the right answer but it is the one that we think is trying to be reasonable or address effectively the position of that customer and the loss of value of that property.

Deputy Michael McGrath: I appreciate that AIB is in a closed period but I wish to confirm the cost of this whole issue to the bank. Its provision is €190 million since 2015. It has utilised €133 million of that. Is that correct?

Mr. Bernard Byrne: Correct.

Deputy Michael McGrath: Does the provision of €190 million include the cost of staff and the administrative cost of the 500 people in the bank working on this?

Mr. Bernard Byrne: It does not include the pure administration costs associated with this.

Deputy Michael McGrath: It does not, so it is purely redress and compensation for the customer.

Mr. Bernard Byrne: Yes.

Deputy Michael McGrath: What is AIB’s percentage range of redress and compensation?

Mr. Bernard Byrne: The range can be very broad. Mr. Kinsella might have statistics.

Mr. Tom Kinsella: We have four different levels of compensation. The compensation percentage runs from 15%, for the vast majority, some 85% of customers, to the 22% range for customers who had entered the legal process, 22% for customers where the property has been sold but the rate has not been deemed causal and, finally, for those most severely impacted, the 14 customers we spoke about, the compensation rate is 30%. On top of that are the compensation procedures that Mr. Byrne talked about. On top of that again is a minimum payment of €50,000 per customer.

Deputy Michael McGrath: The prevailing rate issue is the most significant outstanding issue that AIB faces as part of this tracker scandal. AIB has identified approximately 4,000 customers. Up until recent months, they were not included in the scope of AIB’s tracker examination. How did AIB arrive at the compensation flat fee of €1,000?

Mr. Bernard Byrne: The group was not included within the scope of our examination as our determination for that group was that the prevailing rate which would have been offered at the time would have been significantly higher than the rates in the market and therefore the customer did not suffer detriment. As a result of the engagement with the Central Bank over the past quarter, its main objective was to get customers into the framework so that they would have the protection of the framework and that is how we arrived at the significant increase of those numbers coming in. We have not looked at those customers as being impacted because of the detriment issue. We do not view them as having lost as a result of the tracker issue. We might talk about that later. The compensation issue was derived by-----

Mr. Tom Kinsella: The compensation of €1,000 was derived from looking at recent Financial Services Ombudsman, FSO, cases and the awards that the FSO has made for service level breaches. We take the upper end of that, which was €1,000.

Deputy Michael McGrath: Did the Central Bank have to tell AIB to include this cohort of customers in the examination? AIB was not including them up to October.

Mr. Bernard Byrne: Correct. Our determination in respect of those was that they were not disadvantaged as a result of the tracker offer because the tracker they would have been offered would have been at a higher rate. The Central Bank was keen, and I think the Deputy has had this conversation-----

Deputy Michael McGrath: That is Mr. Byrne's interpretation.

Mr. Bernard Byrne: It was also the interpretation of the Central Bank relating to the compensation for that matter. We have ended up with a payment for the breach of contract as opposed to something else. We have agreed that customers are in the framework which gives people the ability to appeal their own individual circumstances but, in overall terms, the position around the prevailing rate is one that we have worked through with the Central Bank.

Deputy Michael McGrath: These 4,000 or so customers were never on a tracker but they had an entitlement to go onto a tracker rate after a fixed rate period, generally.

Mr. Bernard Byrne: It depended on what particular offer they were on but it was probably a fixed rate.

Deputy Michael McGrath: Many were on a fixed rate and had an entitlement then to go onto a tracker rate. There is a clause in the contract stating "at the prevailing rate". Is the prevailing rate defined in the mortgage contract for this cohort of customers?

Mr. Bernard Byrne: No. The prevailing rate is, in our view, interpreted as the rate that exists on the market at the point in time of the actual consideration. For any commodity, the prevailing rate of offer is the rate at that point in time.

Deputy Michael McGrath: Would most of these customers have had the same or a very similar contract or are there a range of different types of contracts for these customers?

Mr. Bernard Byrne: In general, those customers would have a very similar contract which had the option relating to the prevailing rate, as the Deputy described, included.

Deputy Michael McGrath: On top of that clause which entitled them to a tracker at the prevailing rate, is there not another clause in their contract that explicitly defines a tracker mortgage interest rate?

Mr. Bernard Byrne: Defines and describes it?

Deputy Michael McGrath: Yes, which defines it as being the European Central Bank, ECB, rate plus the tracker margin.

Mr. Bernard Byrne: There is no tracker margin in those contracts.

Deputy Michael McGrath: In any of them?

Mr. Bernard Byrne: In the grouping that we are now talking about, those customers did not have a tracker margin included in their contracts.

Deputy Michael McGrath: So in all cases for these 4,000 customers, there is one clause that entitles them to go onto a tracker mortgage-----

Mr. Bernard Byrne: To be on the prevailing rate tracker.

Deputy Michael McGrath: -----at the prevailing rate following a period on a fixed rate or otherwise. There is another clause in their contract that defines the tracker interest loan as being the ECB plus a margin and Mr. Byrne is saying the margin is not specified in any of them.

Mr. Bernard Byrne: There may be some customers in a different group but they would have already been on a tracker, come off it and gone back onto one. In this group no margin is specified.

Deputy Michael McGrath: How did the bank calculate the prevailing rate?

Mr. Robert Mulhall: I will respond to the previous point first and then lead into how we calculate the prevailing rate. Quite specifically, if customers started on a tracker mortgage then section 1 of their contract would have indicated the margin for their tracker mortgage. I think that is what the Deputy is referring to. The 4,000 customers we are talking about, however, did not start on a tracker mortgage so no such mortgage margin was defined in section 1. I think that is where the Deputy is trying to get to in respect of that clause 3.6.

To define a prevailing rate we looked at the underlying funding costs in the market at the time. It is worth noting that in 2008 and 2009 in the UK, where trackers were not withdrawn in some instances, tracker mortgages went up to 7% and exceeded that. The reference rate for what was likely to happen given the funding environment makes clear that it would have been a very expensive product. We considered it from the point of view of cost of funds, cost of risk etc. and had that verified by an external party to ensure independence and that it was a fair treatment of what the model would have told in terms of what the prevailing rates would have been in the intervening period.

Deputy Michael McGrath: Mr. Mulhall's view is that the prevailing rate refers to the prevailing rate at the time that they became entitled to go on to a tracker. They are not entitled to go onto a tracker at the prevailing rate today.

Mr. Robert Mulhall: The contract stipulates the then prevailing rate and that is the basis on which the decision was made. To respond to the earlier point, that is the basis for how much the bank was maybe incorrect in its decision in the past, whereby it was interpreting the then prevailing rate in these instances as the tracker product had been withdrawn, therefore there was no such offer to be made to customers. That applied to customers who had and did not have trackers and we have now rectified that situation.

For clarity, we have returned people who previously held a tracker to their historic margin. That is 640 customers and that was completed in the latter half of 2016 and early 2017.

Deputy Michael McGrath: If the bank is so confident that it is right on this why is it paying them all €1,000?

Mr. Bernard Byrne: We accept the fact that there has been a breach in respect of our inability to offer them a rate at that point and we have agreed to put in place a compensation amount for that particular breach.

Deputy Pearse Doherty: On that question of the prevailing rate and the surrounding issues, did these 4,000 customers have an option when they were taking out their mortgage to take out a tracker rate initially?

Mr. Bernard Byrne: At the time the tracker was in situ any customer would have had the option to take a tracker.

Deputy Pearse Doherty: In the contract documents that they have, if their mortgages are still live, they could have taken out a tracker on day one but most opted for a fixed rate for a period, usually three or four years. Is that correct?

Mr. Bernard Byrne: The whole offer at that time contained several elements and one was the product they took out at that time. There is a set of terms and conditions and the product they take out. It is all one package at that time. The customer takes out the product and the terms at that time.

Deputy Pearse Doherty: I have seen many contracts and it would be very helpful if AIB could take out the personal details from some contracts and supply them to the committee so that we could be more familiar with them. I have seen letters of offer and contracts from the bank and it is clear that the letter of offer would be a tracker mortgage but there was an option to fix if the individual wanted to. The individual would fix for three years or so and the conditions in clause 3.2 were that after the fixed period it would be the prevailing rate. Is that the type of contract we are talking about for the 4,000 customers?

Mr. Bernard Byrne: They are the 2006-2009 terms and conditions, as we call them because they were the terms that prevailed for that period. At the point that the contract was executed there was a decision and determination made on what rate and what type of rate they were taking out. The contract would not have referred to a tracker margin.

Deputy Pearse Doherty: The letter of offer would have contained several options, one of which was a tracker rate, with an ECB plus margin fixed to it, would that be correct? They would also have an option of fixing, which many of them did and then the contract was drawn up on that basis.

Mr. Robert Mulhall: In these cases the customer specifically chose the fixed rate mortgage to start with and therefore got a letter of offer and a contract associated with a fixed rate mortgage which gave them the options we spoke about earlier but there was no definition of a tracker margin in their contract.

Deputy Pearse Doherty: Would there have been a definition of this tracker margin on the letter of offer?

Mr. Robert Mulhall: It is not my understanding. I think the letter of offer would refer spe-

cifically to the product they had chosen.

Deputy Pearse Doherty: Let us examine who was denied a tracker mortgage by AIB. This cohort of individuals was contractually entitled to a tracker mortgage and the bank denied them the tracker mortgage. Then the bank switched 900 people who were on tracker mortgages and it denied them the right to go back on to the tracker mortgage and they had a contractual right to one. There were 939 on a margin and there were the 3,509. If we break down those four different categories of individuals into the 4,000 customers, did AIB deny every single person who was never on a tracker but had a contractual right to go onto one the chance to go onto a tracker during that period?

Mr. Bernard Byrne: We have said that those people, under that contract at the time that they came into being, were offered a renewal, if their original offer was, for example, a fixed rate, and would have been offered a variable rate or an additional fixed rate. There was no prevailing rate tracker in place at that time so we did not offer one.

Deputy Pearse Doherty: I will repeat my original question because I do not think Mr. Byrne answered it. If they chose to fix for a second time and came off that would they have been entitled to a tracker?

Mr. Bernard Byrne: The contract terms would have continued to exist on the same basis.

Deputy Pearse Doherty: They would have been entitled to a prevailing rate tracker.

Mr. Bernard Byrne: Yes, a prevailing rate tracker.

Deputy Pearse Doherty: For whatever number of those 4,000 customers that fixed for the second time is the prevailing rate calculated at the end of the second fixed period?

Mr. Bernard Byrne: The prevailing rate for every customer is on the basis of the day we are offering the new rate on the mortgage.

Deputy Pearse Doherty: Will Mr. Byrne explain that to me? Is that the end of the first or second fixed period?

Mr. Bernard Byrne: It is the end of whatever that relevant period is; if it is in time forward, if it is the second period, then it is the end of the second period. At the end of the first period it was the rate that would have applied at that date and on the future date it is the rate applied on that date.

Deputy Pearse Doherty: If somebody fixed for a second period, for five years, it is five years beyond when they chose to fix the second time.

Mr. Bernard Byrne: Correct.

Deputy Pearse Doherty: Returning to my question, was every single one of the customers who had a contractual right to be offered a tracker rate after October 2008 denied the option of a tracker rate?

Mr. Bernard Byrne: As I have said, we did not have a tracker product so therefore we did not offer them that product.

Deputy Pearse Doherty: Is Mr. Byrne saying that the circa 900 customers who had a tracker rate switched to a fixed rate when trackers were withdrawn, they did not have a contractual

right but there were communication issues?

Mr. Bernard Byrne: Yes, under their particular contract the contract did not have any language associated with a tracker included in it because they would have originated pre-trackers. Therefore there was not a contractual position associated with a tracker. They would have been entitled to an offer of a variable rate mortgage or a fixed rate. That was under the terms and conditions of their contract. Upon final examination in respect of that, and when the Central Bank as part of its programme spoke about its broad perspective on the industry and the weighting to be given to marketing materials over contractual materials, we decided that we should include them. That effectively meant that any customer who ever had a tracker in that context would therefore be entitled to go back onto that tracker rate, as a result of giving more weight to the marketing materials than the contractual ones.

Deputy Pearse Doherty: What category do the 3,509 customers fall into?

Mr. Bernard Byrne: They fall into a whole series of categories. My colleague, Mr. Kinsella, will comment.

Mr. Tom Kinsella: The primary make up of that category, or the largest group, is the 600 that Mr. Mulhall referred to, which are the customers who had the 2006-09 contract. They started out with a tracker and then went on to a fixed period. When they rolled off their fixed, the tracker product was no longer available as an option. They are the group that we have restituted back to the historic tracker.

Deputy Pearse Doherty: So that category included 600 people.

Mr. Tom Kinsella: Yes.

Deputy Pearse Doherty: Can I presume that many other people took out trackers at the same time under the same condition who got back on to their trackers? Did AIB stop every single one of them in that category getting back on to their trackers?

Mr. Tom Kinsella: At the time that the tracker product was withdrawn anybody who had a tracker maintained their tracker. The people affected here are people who rolled off their trackers. I mean they left trackers before the product was withdrawn and went on to a fixed product. That fixed product expired over the timeframe between 2008 and 2012 when there was no prevailing rate.

Deputy Pearse Doherty: Was every single person in that category denied a tracker rate?

Mr. Tom Kinsella: Because there was no tracker rate available.

Deputy Pearse Doherty: I listened to what Mr. Byrne said about the reasons and how the bank responded. To tell the truth, my blood pressure continued to increase because I simply do not believe what I heard. I do not believe that IT systems can be blamed and that the effects were not considered at the time. I know Mr. Byrne was not there at the time but I want to tell him that I believe that it was not just an accident. I do not believe people when they say: "Ah, we discontinued the scheme in 2008 and we did not consider that thousands of our customers had the contractual right to go on to trackers." The reason I say I do not believe AIB is because customers approached it and made complaints. They told the bank about their entitlement long before any examination by AIB in 2015. What did AIB do? AIB pulled down the shutters, told people to hit the high road and told people they were wrong. When the matter was brought to

the bank's attention by individuals it did not correct the matter.

Mr. Bernard Byrne: The question I answered was in respect of how the matter started, so I answered the question on 2008. In the opening statement we talked about the period after that. We identified and recognised that complaints came in. We have said that there was a very small number of complaints, and they were. In the scheme of where the organisation was and where things were, there was a tiny number of complaints. A number of those complaints were made and passed on through the ombudsman, and the ombudsman did find in favour of the bank in terms of its position. At that point in time, people understood the position that the bank was adopting and, principally, these were around rate-type issues, and that actually there was a reasonable position that the bank was adopting in respect of that offering.

It was only later on, and the period that we are talking about now is into the 2015 period, when the prevailing rate issue started to emerge more in the ombudsman-type issue. Broader issues were taking place across the industry at that point in time. We identified a particular group in respect of an EBS offering, which we have not talked about. It is a price promise offering, which also sat on a 3,500 group that Mr. Kinsella has talked about. All of those issues came and we said that we need to look at this because there is enough indication now that there is a problem. That was when, in August 2015, we started the programme around looking at the whole tracker issue, and started to step up our position on that.

Deputy Pearse Doherty: When the Central Bank wrote to the CEO of AIB in 2010 on the tracker issues, what did the bank find? Who conducted the examination? How did AIB ignore the fact that 9,348 of its customers were contractually denied their legal entitlement?

Deputy Pearse Doherty: It is important to look at the issue, as I understand it, that was under the scope in 2010. My colleague, Mr. O'Keeffe, will comment.

Mr. Jim O'Keeffe: In 2010, the Central Bank had undertaken a broader view of the industry to see what were the issues that were pertaining. They had identified some issues in relation to terms and conditions that existed. At the time there was a restitution or a group of customers identified within AIB, within our broker business, who had specific terms and conditions that were not clear in terms of what would happen with the outcome post the fixed term piece. As we have identified in our document, there were 200 customers restituted or redressed at that point in time.

In addition, one of the key findings of the review conducted by the Central Bank at the time was that, in general, there had been no process around warning customers as they were stepping off a tracker on to other things, or changing the contract for different reasons. There was no warning in place to the customers. That was one of the key findings at the time, and that was implemented at that point to create that warning as people would exit. That would have then pertained to customers in all of these groupings. In terms of the 4,000 customers, and the 900 customers, that warning letter would have been put into place to protect customers as they went forward.

Deputy Pearse Doherty: Mr. Byrne, when customers approached and argued with AIB that it had done them wrong, did any of those customers come from the category of individuals who had a contractual obligation? AIB now recognises that those people had a contractual obligation under law but AIB denied them that right at the time.

Mr. Bernard Byrne: The clearest contractual obligation one, and the first one that we came

across, was in respect of the price promise issue under the EBS contractual piece. That was the first one that we really became aware of that said, “Actually, there is an issue here.” That was because there was a price promise in terms of a commitment to the customer, which had not been reflected in the way that rates were dealt with as those customers moved from one contractual position to another.

Deputy Pearse Doherty: What is the answer?

Mr. Jim O’Keeffe: I can talk about that grouping, Deputy. The initial 3,500 people were made up of over 30 different groupings in terms of what happened. I know that the Deputy does not favour the use of the term “unintended consequences” but various circumstances created each of those groupings. The grouping that Mr. Byrne referred to was the grouping that came to light in 2015. We have talked about the prevailing tracker item. That was something that we were aware of in terms of the contract status of that. The EBS grouping that emerged at the time was whereby customers had moved from one rate to another rate. In the first rate that they were on they had been given a price promise that their rate would never go above a certain percentage. When they had been moved that promise was dropped. They had lost that promise. At that point, when we identified that issue and, indeed, with the other issues that were emerging in the market, what was identified was - and we have spoken a lot about the groupings just now - that there could be inherent issues in the book that had not come to light during that intervening period. That is then what caused us to go through the analysis and resulted in the-----

Deputy Pearse Doherty: I am aware of that, in terms of 2015. AIB deserves a pat on the back for finally taking action in 2015 on the EBS stuff and at a time when the courts had decided that banks - AIB’s competitors - were wrong and were involved in what I would call “grand theft” of their customers.

I shall return to discussing the customers who came knocking on the door of AIB. They told AIB that they believed they were contractually robbed by it in terms of not being given a tracker mortgage. Has any of those customers been put back on a tracker mortgage? Whatever about the ombudsman, the first port of call is that AIB must tell its customers that they are wrong and that the bank is right. Has AIB reversed any of its decisions that it made in those earlier years?

Mr. Bernard Byrne: Any of the customers who are under the terms of the framework in the positions that the Deputy had talked about will have been restituted and redressed or are part of the restitution programme.

Deputy Pearse Doherty: Does Mr. Byrne believe that the original decisions made by AIB were wrong? Are they admitting that the original decisions were wrong?

Mr. Bernard Byrne: We have clearly made different decisions now than were made over that time period so we have changed those decisions for the reasons we have talked about.

Deputy Pearse Doherty: We are dealing with AIB here but all of the banks are the bloody same. All of them did the same. None of these 9,000 customers ended up better off with more money in their pockets. They were not granted additional houses. AIB took the houses off them. This committee will hear from the Bank of Ireland that it did the exact same thing. We are supposed to believe that this issue arose due to unintended consequences. We are supposed to believe that some of the highest paid individuals in the history of the State sat around board tables and decided to discontinue a product in 2008 without realising that 9,000 of their customers had a contractual obligation. I cannot swallow that guff and I do not think the bank should

ask the public to swallow it. It was in the interest of the bank to move people off trackers. What I have heard here is that anybody who could have been moved off was moved off. The only problem that the officials had as bankers, and I am not talking personally but AIB corporate, is that they could not get rid of the other hundreds of thousands of people who had trackers at that point in time because they clearly had it written into their contracts. As a result, AIB could not figure out a way to swindle them out of their own money. That is what I believe happened and I think it will continue to happen.

Mr. Bernard Byrne: I do not share that perspective. Hindsight often makes it easy to have a certain narrative. At the time those decisions were made, rates were where they were and decisions were made. We have gone through an unprecedented period in terms of the decade that followed. We have talked, it is to be hoped openly, about the issues that occurred with each customer grouping as they happened and developed. That is the situation. Our job is trying to fix that and move the issue forward, but we have a different perspective.

Deputy Pearse Doherty: How many legal cases are against AIB relating to this? These are just numbers. How many legal cases is AIB facing relating to the tracker mortgage issue? How many notices of legal action has AIB been given?

Mr. Jim O’Keeffe: All legal cases that were in progress are now covered within the impacted groupings. There are a number of cases that have chosen not to go down the appeals route. We are awaiting their position with regard to whether they are going to progress on the legal piece.

Deputy Pearse Doherty: I am going to ask Mr. Byrne questions that the committee already asked him. In my view, we have not been given the information. The question concerns the number of legal cases currently involving the lender and trackers.

Mr. Jim O’Keeffe: A total of 26 cases are ring-fenced with the impacted customer base. While there are a number where the customers have chosen not to go the appeals route, the rest of the cases will be resolved as part of the impacted base.

Deputy Pearse Doherty: What are the number of homes repossessed by the bank that should not have been repossessed of which the bank still has ownership?

Mr. Jim O’Keeffe: As I said earlier, none of the family homes that were lost in this review were repossessed. They were part of a working through with the customers at the point-----

Deputy Pearse Doherty: Voluntarily surrendered. How many of them does the bank still have a hold of?

Mr. Jim O’Keeffe: We have a number of properties. I think we have two properties at this point but-----

Deputy Pearse Doherty: Is the bank going to give them back?

Mr. Jim O’Keeffe: We have offered the properties back to some customers but in some instances, they would prefer to take the redress as opposed to the properties. That is a complicated reasons as to why-----

Deputy Pearse Doherty: If they want the property back, will the bank give it back?

Mr. Jim O’Keeffe: Yes.

Deputy Pearse Doherty: With regard to question number eight, which concerned how many impacted customers have yet to be contacted by the bank, Mr. Byrne asked us to refer to question number two but that answer does not exist with regard to question number two. How many of the 9,348 customers have yet to be contacted by the bank?

Mr. Bernard Byrne: The two newer groupings, which we have run through, the 900 and the 4,000, were only identified within the December time period so we cannot say they have been identified and communicated with at this point in time because we have not completed the identification process in respect of all those customers. That is the reference to question number two.

Deputy Pearse Doherty: So the answer to that question is that the bank has not contacted 4,900 customers.

Mr. Bernard Byrne: Those two groupings.

Deputy Pearse Doherty: I know Mr. Byrne does not want to say the number but it is 4,900 customers who have not yet been contacted by AIB to tell them they are affected customers.

Mr. Bernard Byrne: Those are the two groupings, yes.

Deputy Pearse Doherty: With regard to the 158-----

Chairman: We must move on.

Deputy Pearse Doherty: Okay, I will finish. This is my last question. The 158 and 171 customers who still have not had rectification, redress or compensation may have been identified up to two years ago - actually since 2015 when the bank began its so-called investigation. Have they all been contacted? Why has it taken so long to give them back their money?

Mr. Tom Kinsella: Those particular customers would have been identified in quarter 4 of last year in October, November and December. They will be contacted over February and early March for rectification, redress or compensation.

Senator Rose Conway-Walsh: I thank Mr. Byrne for his presentation. Obviously, when the decisions were being made originally, the bank sought legal advice as to whether it could end the contracts and what its contractual obligations would be. It sought legal advice specifically.

Mr. Bernard Byrne: Again, this is us reviewing 2008. The decision was made around the new product going forward.

Senator Rose Conway-Walsh: Yes, but that would have been done on the back of legal advice because with any situation where there are contracts involved, one obviously checks them against the contracts.

Mr. Bernard Byrne: No, the offering would have been about the tracker rate offered to a new customer who walked into the branch at that point in time. The decision was that this offering was being taken away so that was that decision. As far as I can see, it would not have involved a legal consideration about whether that would or would not have been offered to customers. What we have talked about is that clearly the consequence of that, which was much more detailed and involved, as we now know, was not properly thought through, so that would speak to the point about which the Senator is talking, which is that if people had really thought

it through, they would have gone through that process, but that did not happen.

Senator Rose Conway-Walsh: The fact that legal advice was not sought is astonishing. That is the first thing anybody would do in terms of changing somebody's contract or looking at somebody's contractual obligations. It is absolutely astonishing. I have a question about the 4,000 people who had the contractual right to a tracker. Why are they different? Why are they not getting full redress and compensation?

Mr. Bernard Byrne: These are customers who never had a tracker and who, according to the contract, had a right to be offered the prevailing rate tracker. As I mentioned, the decision made was that this product would have been priced at a level that would have made it unattractive so it was withdrawn from the market. Therefore, the decision was that these customers were not disadvantaged from a commercial point of view because the prevailing rate tracker would have been unattractive and that is why they are not included in the confines of the other option about which the Senator is talking. That is the answer to the question.

Senator Rose Conway-Walsh: The fact that an amount is taken and there is no compensation or redress for them is grossly unfair.

Mr. Bernard Byrne: No amount was taken from these customers.

Senator Rose Conway-Walsh: Sorry?

Mr. Bernard Byrne: No amount was taken from these customers.

Senator Rose Conway-Walsh: No, but there was a contractual obligation, as Mr. Byrne said himself when he described them. Have we been given a list of the 30 different customer groupings that AIB examined in the first instance to see whether they were entitled to compensation or redress?

Mr. Bernard Byrne: It is not a-----

Senator Rose Conway-Walsh: Can Mr. Byrne submit that to us so we can have a look at it?

Mr. Bernard Byrne: Yes, we can.

Senator Rose Conway-Walsh: Has AIB received a letter from the Central Bank about the responsibility for senior management of the banks to report to the Garda if it sees a violation of the regulatory code?

Mr. Bernard Byrne: In general, we cannot comment on anything the Central Bank does or does not do to us but I know it mentioned it when it was here so the answer is "Yes".

Senator Rose Conway-Walsh: Has AIB submitted any reports to the Garda on the back of that?

Mr. Bernard Byrne: No.

Senator Rose Conway-Walsh: Is Mr. Byrne concerned about the significant legal obligations? Does he think any of the banks are concerned about the significant legal obligations about which the Central Bank spoke the last day regarding potential breaches?

Mr. Bernard Byrne: I cannot comment for other institutions. We understand our obliga-

tions and have complied with them.

Senator Rose Conway-Walsh: How can people going into an AIB branch today be sure they are getting the right product for them? Will Mr. Byrne explain to us how the culture within the banks has changed so that this will never happen again?

Mr. Bernard Byrne: If we go back to the starting conversation with Deputy McGrath, we talked about how the decision that was made clearly did not think of the consequences. Certainly in terms of processes and procedures that exist at this stage, all products and all product decisions think forward and backwards in terms of the impact and the obligations. We have a full understanding of the obligations that sit in every product and every contract and we have done a lot of work to make sure we understand those, which was not the case historically.

We have had a complete change in terms of the leadership, the board and senior management teams across the organisation. This is to give us a fresh perspective on where we are. We have introduced quite a diverse leadership team in terms of banking and non-banking positions to make sure we have a different perspective.

We have a performance management system across the organisation that in respect of the assessment of individual performance assesses 50% on what someone does and 50% on how they go about doing it so how people do their job, and that includes interactions with customers, is just as important as what they actually get done. Historically, effectively, 100% of assessment would have been on the what side. We have a net promoter score system that allows us 30,000 individual customer contacts every quarter to understand the customer's perspective in respect of each of our product offerings and each of our customer journeys and we rank, rate and track those. In respect of complaints, which historically would not have been analysed as forensically, we have a complaints team that effectively analyses them and looks for root causes. Even small modest numbers of complaints would be picked up now and we would understand what the underlying causes were in respect of those.

Staff engagement is very important. We have spent a significant amount of time working with our own staff to understand what they feel about the organisation. We carried out our first assessment in respect of that in 2013. Obviously morale was very low at that time and the position was very difficult. The bank was ranked very low at the fifth percentile in terms of comparable organisations in a worldwide survey. When we last completed the survey in November, we had reached the 62nd percentile, which is quite good and shows we are moving in the right direction, with engaged staff, interest in the customer and having adopted a number of pillars across the organisation.

I ask my colleague, Mr. Mulhall, to answer the Senator's question on the customer perspective in terms of bank branches.

Senator Rose Conway-Walsh: Mr. Byrne has said that 500 people are currently working on tracker mortgages. Were they recruited from outside of the bank? Did those people already work for the bank but were assigned to this new role? What will happen to them when this tracker issue is sorted out?

Mr. Bernard Byrne: It is a combination. The majority of them would be staff in AIB who have moved from different parts of the bank to this programme. Some external people have been recruited for the programme specifically.

Senator Rose Conway-Walsh: How much has been invested in the IT system in the past

couple of years?

Mr. Bernard Byrne: In the past six years it is probably about €1.5 billion.

Senator Rose Conway-Walsh: Is that enough investment to protect people from this happening again? It is despicable that even though decisions were made to take money off people, the systems have been blamed.

Mr. Bernard Byrne: We have identified a whole series of issues. Let us remember that we have had to fix the bank. During the period that we are talking about the bank lost €19 billion operationally and an extra €9 billion of losses was associated with the transfer of assets to NAMA. That is the size and scale of what happened operationally. Over the period we have taken €450 million of operating cost out and grown the income side by €800 million, so €1.3 billion has been dealt with in respect of that. A lot of things have happened and changed across the organisation, including building much more resilient and much more reliable systems.

The conduct agenda and the prudential regulation agenda have moved on hugely. Therefore, the amount of supervision and intervention in the organisation is radically different. We are moving in a direction. We have not in any way achieved what we want in terms of the final position but I think we are on a journey to get to a better place.

Senator Rose Conway-Walsh: Is Mr. Byrne saying that something like this can never happen again?

Mr. Bernard Byrne: That is the whole purpose of what we are about. We want to make sure we build more resilient systems and more resilient management structures and accountability across the organisation.

Senator Rose Conway-Walsh: I will leave my questions at that, a Chathaoirleach.

Deputy Paul Murphy: Will Mr. Byrne tell me how much AIB benefited in monetary terms from these decisions that led to scamming people either out of their right to a tracker or in terms of the wrong margin?

Mr. Bernard Byrne: I do not have an exact number. I would put the context the other way around. We will have a different view on prevailing rate. Let us all accept that we have a different view. Approximately speaking, the total number of customers under this framework who are being put into a position where a tracker has been reinstated for them is about 4,000. The approximate income, and I will try to estimate the number based on average balance, is about €170,000. The interest rate differential is probably between €15 million to €20 million per annum in terms of the operational impact across the organisation. This was at a time when the overall income and cost base of the bank changed by €1.3 billion. It would not have been a logical place for the bank to focus a lot of resources on getting this deliberately wrong.

Deputy Paul Murphy: Please round that figure up. On the basis of the number of years this matter has been in operation, is Mr. Byrne saying that the bank benefited by around €100 million?

Mr. Bernard Byrne: The numbers will start to link back into the overall amount of the compensation payments that we are talking about.

Deputy Paul Murphy: Will Mr. Byrne give me an overall amount that he thinks AIB benefited as a result of this matter?

Mr. Bernard Byrne: By the time we have made our final determination - I do not know the final number so I am not going to guess the final number - it is going to be somewhere north of €50 million but probably south of €100 million. I do not know.

Deputy Paul Murphy: Let us say it is €80 million, which is probably an underestimate. Is Mr. Byrne saying that it is a happy coincidence that the bank made a decision not to offer tracker mortgages which had unforeseen and unintended consequences in the form of a benefit to the bank of between €80 million and €100 million? Is the windfall purely a happy coincidence for the bank?

Mr. Bernard Byrne: Let me make two other comments on that. First, plenty of other mistakes were made that went the other way. We do not talk about them, nor should we, because they are issues where we found that the bank was equal in terms of the flaws on the other side. Those are issues that clearly are not of importance in terms of fixing a customer issue because the customer benefited and he or she kept that benefit.

Second, because of the size of the bank and its balance sheet, it is very hard to make a small mistake. Any mistake that is made will end up being a big financial mistake. It is a business that makes in excess of €1.2 billion of operating profit. We have a balance sheet of close to €100 billion. Therefore, a very small mistake multiplied by that will mean we will end up dealing with large numbers.

Deputy Paul Murphy: To call it a very small mistake is really dangerous.

Mr. Bernard Byrne: I did not. What I said was any mistake the bank makes, no matter how small, will end up having a consequence. I was giving a context. I did not talk about this issue in that regard.

Deputy Paul Murphy: It is purely what Mr. Byrne has said. He minimised the issue. He has said that, in the context of all of the money that the bank has, it is not that much money and it is purely a coincidence that the bank benefited from the mistake. He said that, first, it is a coincidence that the bank made decisions that resulted in people not being entitled to go back onto tracker mortgages.

Mr. Bernard Byrne: No. I have also said that during or around that period, the bank lost €19 billion operationally from what it was doing. The bank was not in a position to make the right decisions for a whole series of things. That is the context I tried to provide. We are looking at this issue, rightly, as an issue that affected individual customers and should not have occurred. To put the matter in context, there are a series of other things that need to be borne in mind.

Deputy Paul Murphy: I am not sure about the relevance of the point made about the financial loss but I am interested in exploring the matter further. As I understand from the opening statement, the decisions made about tracker mortgages were not made as decisions to improve the profitability of the banks or to deny people's contractual rights to a tracker mortgage and that these were an unforeseen consequence. Is that what Mr. Byrne has said?

Mr. Bernard Byrne: The clear decision that was made to impact the profitability of the bank was to take the product out from new customers. The piece that flowed over the decade that followed was not part of that decision piece. The decision piece was around a new product.

Deputy Paul Murphy: Is Mr. Byrne saying a decision piece was taken not to continue to

offer tracker mortgages to new customers? Correct. Is he saying that it was an unforeseen and unintended consequence and meant that people who were coming off fixed mortgages were not entitled to what they were entitled to, which was to go onto tracker mortgages?

Mr. Bernard Byrne: Based on what we have looked back on and seen at that point in time, that is what we have determined.

Deputy Paul Murphy: It was not a decision to improve profitability, that part of the consequence. Is Mr. Byrne saying that it just flowed as an unfortunate but automatic consequence of the first decision?

Mr. Bernard Byrne: Yes.

Deputy Paul Murphy: Therefore, the relevance of the loss of the €19 billion does not play into this unless one accepts-----

Mr. Bernard Byrne: No. I identified that it was not a unique decision that was made at one point and it was not the only decision or frame of reference as to where the banking sector was as that point in time. That is my only point.

Deputy Paul Murphy: Yes. In Mr. Byrne's narrative that explains the first decision. It does not explain the consequence unless he accepts that there was a conscious mind, in terms of the consequence. As I understand from his statement, he does not accept that.

Mr. Bernard Byrne: The evidence that I have does not suggest that.

Deputy Paul Murphy: How does that relate to the decision about margins? I understand the logic that says we have withdrawn this product from the market and, therefore, when customers come off their fixed mortgage we will not offer a tracker option to them. How does that relate to the decision to charge people an incorrectly high margin?

Mr. Bernard Byrne: Sorry, we have pointed out that was not a tracker decision, as we have talked about it here. When we looked back at all of these accounts as part of the review, we discovered that some of those customers had for a period been charged the wrong margin.

Deputy Paul Murphy: Did the bank find anyone who was charged a lower margin?

Mr. Bernard Byrne: Absolutely.

Deputy Paul Murphy: Were more people on the higher margin than on the lower one? Was it more a sum of money than a hike at the other end?

Mr. Bernard Byrne: It appears, although we did not carry out a detailed analysis, that the errors that occurred happened with equal frequency either way. More than 7 million adjustments were made to mortgage accounts over that sort of time period. That is the context in which errors were made.

Deputy Paul Murphy: The essential argument is that in terms of the consequence of the decision not to offer tracker mortgages to new customers, existing customers were denied their contractual rights. Effectively, that was an unforeseen consequence and a happy coincidence from the point the view of the bank's profitability and that alone; it was not a happy coincidence from anybody else's point of view.

Mr. Bernard Byrne: As we have said, with respect to the way that period flowed thereafter,

it did not emerge instantly, in terms of the experience based on what was happening, that this was a big problem, as we have discussed.

Deputy Paul Murphy: There is another coincidence, which is the fact that all the banks that were offering tracker mortgages made similar decisions around the same time. Does Mr. Byrne have any explanation for that?

Mr. Bernard Byrne: It is exactly the explanation we have provided, which is that at the time the banks were substantially, and certainly in terms of any marginal funding, funded by wholesale markets, which were providing funds to the banks at European Central Bank, ECB, rates. The collapse of those markets dislocation meant that the banks could not fund with the ECB anymore, so, therefore, it could not offer a product at that rate.

Deputy Paul Murphy: I understand all that as to why they stopped offering tracker mortgages-----

Mr. Bernard Byrne: It happened to everyone at the same point in time.

Deputy Paul Murphy: -----but what I do not understand is why people were denied their contractual rights. I do not understand how that flows. Mr. Byrne is saying that was a mistake made by AIB as an unforeseen consequence but the idea that the same mistake was made by all the banks at the same period of time, and that it all just happens to have improved the profitability of the banks, is quite hard to accept, is it not?

Mr. Bernard Byrne: Again, one either accepts or does not that there were effectively two discrete parts to the process that we are talking about, one was the withdrawal decision, which was made in 2008 because of what was happening in the marketplace. The other sets of decisions that were made occurred over a period of time. For example, in 2011, the forward ECB rate was at 3.5%. That was the market rate for ECB rates. It was not immediately obvious in 2011, for example. We are looking back at the history of this where a tracker product at that point in time was instantly the best product because the market was assuming that ECB rates were getting back to that level at that point in time. However, they did not; we all know that did not occur. It was not that there was a light switch moment that occurred forever and that we moved to a decade of incredibly low rates; some of those things evolved afterwards. There is a separation in terms of one decision and then the consequences played out in a different time period. It should have been thought through-----

Deputy Paul Murphy: Sure.

Mr. Bernard Byrne: -----so I am not saying that should not have happened. There should have been an analysis done of those individual contractual positions to understand how decision one affected all the others; it was not done.

Deputy Paul Murphy: Again, Mr. Byrne is saying it is a coincidence, an unforeseen and unintended consequence, that all the banks implemented their decision to withdraw trackers, which had a commercial profitability basis to it, in the same mistaken way to deny their customers' contractual rights.

Mr. Bernard Byrne: I can only speak for AIB and the 30 customer groupings. It was quite a diverse set of customer groupings.

Deputy Paul Murphy: Is Mr. Byrne aware of any contact between AIB and other banks

on this issue from time to time?

Mr. Bernard Byrne: I am not.

Deputy Paul Murphy: We have two possible explanations for this. One is this whole series of happy coincidences that happened to enhance AIB's profitability and other banks' profitability, or the other possibility is that the banks and AIB consciously took the decision to defraud their customers, but AIB expect it to be the first one, that it was just all these coincidences and unforeseen consequences.

Mr. Bernard Byrne: I have outlined, based on what we have looked at and what we have seen from what evidence was there, how the two aspects of that have evolved. Obviously, what we have tried to do since 2015 is to move to the position of solving all these issues. People will have different perspectives. I can give the Deputy my perspective, which I have done.

Deputy Paul Murphy: Has Mr. Byrne ever heard Bertolt Brecht's expression about banks when he said bank robbery is an initiative of amateurs, true professionals set up banks? Does Mr. Byrne think that is accurate in terms of the bank's ability to rob its own customers?

Mr. Bernard Byrne: Chairman, I do not think that is a question I can answer.

Deputy Paul Murphy: Of course Mr. Byrne can answer it.

Mr. Bernard Byrne: It is not one I can answer. The Deputy is asking me to repeat a quote that he has made to me. I do not think that is-----

Deputy Paul Murphy: No, I am not asking Mr. Byrne to repeat the quote. I am asking him if he thinks that banks, as they have done in this instance, in many instances in the past and are likely to do in the future as long as they are run on the same basis, are likely to rob their customers.

Mr. Bernard Byrne: I have already outlined to the Deputy my view.

Chairman: Can the Deputy put a question to Mr. Byrne?

Deputy Paul Murphy: Okay. I will ask Mr. Byrne a question about culture. Does he agree that there is an ongoing cultural problem in AIB, as has been suggested by the Governor of the Central Bank and the Minister for Finance?

Mr. Bernard Byrne: I have outlined previously that we take the issue of developing and continually improving culture very seriously. We have taken a series of steps in the organisation. We believe that those are taking hold and we are developing and delivering a different type of organisation as we go forward. We think we are on the journey. I do not accept the point that we have not tried to do anything. We are trying to do things and some of those are having a meaningful impact in terms of how the organisation is different and is improving. This issue is a scar and is not one that any of us would have wanted to happen but, in terms of the overall perspective of what we are trying to do, we are trying to improve the organisation and the culture.

Deputy Paul Murphy: To the extent that Mr. Byrne accepts there were and perhaps are still some cultural issues, do he agree with the description by the Governor of the Central Bank, Mr. Lane, that it is a culture of seeking profitability to the detriment of the banks' customers? Is that what the problem is?

Mr. Bernard Byrne: As I outlined, one of the objectives of our changing the performance management system is clearly to do the opposite of that, it is to make people focus equally on how we go about doing what we are doing. We have four pillars in the organisation that we try to build everything around, the first of which is customer first. We know we have more to do on it, but that is absolutely where we are at. Does Mr. Kinsella want to say anything further on that?

Mr. Tom Kinsella: A good example of that is the way we have dealt with complaints as we have moved forward. We now have a centralised complaints team to make it much easier for customers to get satisfaction. That has reduced waiting times from 28 days down to 11 days. That team is based in Limerick. In every branch in the country we have a resolver role, which is played by somebody senior in the branch who is authorised to deal with complaints involving up to €750 on the spot, to deal with a complaint from a first point of contact for a customer. That is an example of how we are trying to put our customers first.

Deputy Paul Murphy: To some degree Mr. Byrne accepts that there was an issue culturally in the past.

Mr. Bernard Byrne: What we have accepted is that our job is to build a different bank from the one that was there in the past, so, yes, we are trying to get to a different position.

Deputy Paul Murphy: When Mr. Byrne looks back at the culture that existed then, forget about now, would he agree with that description, of that fundamentally being an important element of what was wrong with the culture, a culture of seeking profitability to the detriment of the bank's customers?

Mr. Bernard Byrne: Even in our banks and in our opening statement we have said that, with the benefit of hindsight, the approach that was adopted in the earlier phases of these was too bank centric.

Deputy Paul Murphy: I have two questions regarding the prevailing rates issue. Is it the case for EBS customers who were never on a tracker that they should have been offered a tracker? In their contracts is the same language used in terms of the prevailing rate non-specified for EBS customers, as it is for AIB customers?

Mr. Bernard Byrne: I will ask Mr. Mulhall to respond to that point.

Mr. Robert Mulhall: No, Deputy. The contracts are very different. EBS was a separate entity at the time, so the contracts have very different wording. The EBS contract is unique and very different from the AIB situation around the prevailing rates. In terms of the decisions we have made, 1,600 people have been restored to their tracker product now within EBS, as we described earlier. It is largely around the price promise issue and the incorrect supplying of terms and conditions associated with a product that gave a customer the perception of a right associated with that product.

Deputy Paul Murphy: In the case of this grouping of EBS customers, there would have been mention in their contracts of a specific rate as opposed to the prevailing rate.

Mr. Robert Mulhall: Yes.

Deputy Paul Murphy: These are customers who did not sign up to a tracker but it is in their contracts as-----

Mr. Robert Mulhall: Specifically, the customer was given what we call a price promise-----

Deputy Paul Murphy: Yes.

Mr. Robert Mulhall: -----where it was said their product would never exceed 1.5% above the ECB rate and the customer switched from that product to a different product but that protection did not carry with them, and we are now fixing that and reverting the person to it. It is worth nothing there is also a group within those 1,600 EBS customers, for whom, contractually, that price promise never existed but through an operational error the wrong terms and conditions were issued to those customers, and we are doing right by those customers by putting them on the same conditions now as well.

Deputy Paul Murphy: Mr. Byrne made reference in his opening statement to difficulty compounded by limited legacy IT systems and operational failures in AIB and EBS when they merged in 2011. I am dealing with the case of an EBS customer who seems to fit into this category. He is in communication with the bank in terms of redress etc. and it has said that he should have been sent a letter and it thinks he may have been sent one, including his entitlement to a tracker mortgage but it cannot locate it. Would that be something related to this in the sense that a communication has been lost as a result of the systems being reconciled?

Mr. Bernard Byrne: It would depend on the individual's circumstances. We would be happy to look at any individual case, the issues involved and understand it. The comment about the systems was more to do with the obligations under individual contracts not being recorded as system events and, therefore, as people moved from one to another those obligations did not move in the system, and given the volume, if one does not do that, one cannot track how these play out.

Deputy Paul Murphy: Thank you.

Chairman: I call Senator O'Donnell.

Senator Kieran O'Donnell: I welcome Mr. Byrne and his colleagues. I wish to clarify a number of points.

In Mr. Byrne's presentation on how the bank responded, he said:

[T]he difficulty was compounded by limited legacy IT systems and operational failures in AIB and EBS when it merged with AIB in 2011. The systems did not record the bank's proper commitments and obligations to its customers.

Did that relate to both EBS and AIB?

Mr. Bernard Byrne: To clarify the way that was meant, because it has been raised twice, we are not saying the integration of the two caused a problem. When EBS merged in 2011, it was apparent that it had the same system issues. That is the way that has been described.

Senator Kieran O'Donnell: So, effectively, it related to both banks.

Mr. Bernard Byrne: It related to both banks.

Senator Kieran O'Donnell: There is an element of "the dog ate my homework". It is an incredibly large institution. How many solicitors are employed in AIB? Typically, how many are employed in-house?

Mr. Bernard Byrne: Probably about 100.

Senator Kieran O'Donnell: Mr. Byrne is saying that someone looking in-----

Mr. Bernard Byrne: That is now. That was not the case before.

Senator Kieran O'Donnell: I have no doubt there were still 50, 60 or 70.

Mr. Bernard Byrne: Most of them are probably to do with the customer difficulty area at this stage so it is a different number. I do not know how many were there but it was a different number.

Senator Kieran O'Donnell: Either way, I know from dealing with the banks over the years that no one is more conversant in the detail of a contract than a bank. I do not buy that argument. I do not buy that the bank did not have a record of the commitments and obligations of the banks. If the banks were enforcing them with customers, they would have them in chapter and verse. It has echoes of "the dog ate my homework".

Am I correct in saying the bank has identified, based on the figures I extracted from Mr. Byrne's presentation, roughly 9,348 customers who are affected? There are 3,509 in the first category, who were on the wrong tracker rate; 939 in the group who were on a higher margin than they should have been on; 4,000 in the group that signed up to a fixed rate but had the option at the end of the fixed rate period to go on the prevailing tracker at that time; and the final cohort of 900 customers who signed up on a tracker, went to a fixed rate, and although there was nothing definitive, they felt it was implied in the contract that they could go back on a tracker rate. That figure comes to 9,348. Is that the correct figure?

Mr. Bernard Byrne: Yes, it is the same number that Deputy Doherty-----

Senator Kieran O'Donnell: We need to clarify with the Central Bank whether the figure we were provided with, which was 33,700, includes the 4,900 - the 4,000 customers, which was the cohort getting a voucher for €1,000, and the 9,00 customers who will receive redress and compensation. If that is the case, the 4,000 and the 900, which adds up to 4,900, is a higher figure than the total number of customers that have been identified as entitled to redress and compensation. Is that correct?

Mr. Bernard Byrne: The Senator is correct in the numbers he has mentioned. The distinction we make is in respect of the 4,000. That 4,000 group is a group that is now included in the framework. They are included in the Central Bank numbers.

Senator Kieran O'Donnell: Mr. Byrne believes they are included in the 33,700.

Mr. Bernard Byrne: Yes.

Senator Kieran O'Donnell: Is Mr. Byrne saying that of the 33,700, nearly 9,400, which is roughly 30%, relate to AIB?

Mr. Bernard Byrne: Yes. As I said, the 4,000 is a different category of customer so, yes, it is in the number, but the category of issue there, which the Senator spent some time discussing with the Central Bank in terms of the prevailing rate issue, is different. As I indicated earlier, we had not included it within the framework.

Senator Kieran O'Donnell: We were told by the Governor of the Central Bank that the

normal compensation was on average 15% of the overall allocation. That cohort of 4,000 signed up for a contract in which one of the conditions was they could return to the prevailing tracker rate at the end of the fixed rate.

Mr. Bernard Byrne: Be offered a tracker rate at the end of their fixed rate.

Senator Kieran O'Donnell: Surely it is a breach of contract on behalf of the bank if the tracker rate is not there when they come off their fixed rate.

Mr. Bernard Byrne: Yes. This is the conversation that has been well rehearsed at this point in time. The position we have, which is the one the Central Bank talked about, is that the prevailing tracker rate would have been at a prohibitively expensive rate and therefore the customer was not denied an attractive commercial offer at that point in time. Therefore, the compensation is to do with the failure to deliver the contractual offer, not that there was a financial loss associated with not being offered that product. It is a very different position than somebody who had an existing tracker margin and was able to go back to it.

Senator Kieran O'Donnell: Can I reconcile a figure? I presume Mr. Byrne was talking about 2008 when he said in his presentation that "Contrary to a widely held view, approximately 104,000 AIB and Educational Building Society, EBS, customer accounts, which at the time of the decision were on tracker mortgage...".

Mr. Bernard Byrne: Correct.

Senator Kieran O'Donnell: What was the peak number of customer accounts on tracker mortgages? Is that with AIB? What was the peak figure between 2002 and 2008?

Mr. Bernard Byrne: I do not know. It could well be that number. I would say it is very likely that number.

Senator Kieran O'Donnell: Will Mr. Byrne explain to me why the bank conducted an analysis of 650,000 accounts? Will he explain why it was looking at that number of accounts when Mr. Byrne is saying the largest figure on trackers is about 104,000?

Mr. Bernard Byrne: Any customer who was on a tracker at that point - the 104,000 - stayed on a tracker mortgage. It is not true that they are all still on tracker mortgages today because some have redeemed their mortgages but effectively 77% of them are still on tracker mortgages. That group did not change. They probably were not subject to any review because effectively they were on a tracker, kept their tracker margin, and still have that tracker product. The contractual review was in respect of all the other contracts, amendments, modifications and top-ups that took place across both institutions over the period to understand if there was any correspondence or communication during that period, all the way back to 2002, which might have resulted in a consequential obligation in respect of tracker, open and closed. It was a much broader time period.

Senator Kieran O'Donnell: That was narrowed down to a cohort of 50,000. At this point in time, apart from the 9,348 that have been identified here, will there be any more people that were affected by the tracker issue that will be found under this investigation?

Mr. Bernard Byrne: The piece we are very comfortable with is the cohorts. There are more than 30 groupings and we are now clear on all of those groupings and how they affect the tracker programme. In respect of the final groupings, we do not want to call that number until

we are clear on it and we have only been including December. We have not done all the verification work associated with customer identification for those latter two groups, the 4,000 and the 900. They will be completed soon and then we will be able to say what those numbers are. There is not a new grouping coming in. It is confirmation associated with those numbers. All the other groupings have been through customer identification and verification.

Senator Kieran O'Donnell: Does Mr. Byrne believe the 4,900 to be the maximum figure?

Mr. Bernard Byrne: That is the number I said I cannot give the Senator certainty on. I am comfortable that the two groupings capture all those customers but until we go back and apply the-----

Senator Kieran O'Donnell: Does Mr. Byrne see any additional customers beside the 4,900 of that cohort?

Mr. Bernard Byrne: Those customer numbers could change. Until we complete the identification work, we are not calling that number. We are saying no different grouping will arise but we have to lock down the number of customers in respect of that.

Senator Kieran O'Donnell: Is it materially accurate?

Mr. Bernard Byrne: Based on what we know, we have captured all the customer data but I will not call the number. We have been through this before. I will not call a number until we have completed the work in respect of it.

Senator Kieran O'Donnell: I want to deal with the cultural aspect of AIB. Did AIB engage in reckless lending in the period up to 2008?

Mr. Bernard Byrne: There was a banking inquiry that looked at that topic.

Senator Kieran O'Donnell: I was a member of it. There is a context to my question. Perhaps Mr. Byrne would give me his overview on it because I want to proceed to dealing with customers and get a flavour of the position on provisioning for loans. Does Mr. Byrne believe the bank engaged in reckless lending up to 2008?

Mr. Bernard Byrne: I was not in the bank at the time. I have not carried out a forensic examination of what occurred at that time. As the Senator knows well, there is a series of reports on it and they have different positions and conclusions. I will not get into the issue of how that played out. There is no doubt but that the period-----

Senator Kieran O'Donnell: Does Mr. Byrne believe the bank engaged in excessive property lending?

Mr. Bernard Byrne: There is no doubt that the bank engaged in excessive property lending at that point in time.

Senator Kieran O'Donnell: One of the ways that is manifesting itself is in the SME sector, in particular. Many SMEs were given loans by AIB and other institutions. Effectively, they borrowed on the strength of their core business but went into property. The weight of the debt on the property side is leading to haemorrhaging for many in the SME and farming sectors. What type of provisioning has AIB carried out against these loans? Has it written them down to recoverable amounts? I want to get to a point where the people affected can get on with their lives. Could Mr. Byrne explain the position?

Mr. Bernard Byrne: I will make some introductory comments and then hand over to my colleague Mr. O’Keeffe.

We have talked a number of times in the past about our having adopted, quite a while ago, an approach basing all the decisions in individual cases on customer affordability. We have been active in coming to compromise arrangements that right-size customers’ debt when they engage actively with us. There is plenty of evidence to suggest that is exactly how we have gone about dealing with the issues customer by customer. Mr. O’Keeffe might give a little more flavour on that.

Mr. Jim O’Keeffe: As the Senator can imagine-----

Senator Kieran O’Donnell: I will outline the context because I have limited time. The context is that many of the loans were backed by the value of the core asset, be it the farm or business. Many of the borrowers now feel they are being held over a barrel by the banks in that the banks are seeking to realise the value of their debt through the sale of the asset that constitutes their livelihood. Has AIB written the loans down to a point at which it can take a write-off on debt that is effectively based on development property, not the core asset? Could the delegates answer quickly because I have to go to a vote?

Mr. Bernard Byrne: That is the approach we have adopted. We have used the provisions created to write off debt as we engage in case-by-case restructuring with customers who engage with us, particularly those in the SME sector, to which the Senator referred. We have got a very long track record.

Senator Kieran O’Donnell: Will the bank write off debt-----

Mr. Bernard Byrne: We do.

Senator Kieran O’Donnell: -----to the point where it allows the core asset to remain unaffected such that the borrower may be allowed to get on with his business?

Mr. Bernard Byrne: We proceed on a case-by-case basis. We need active engagement from the customer and we need full disclosure of the financials, but that is our core operating principle around affordability.

Chairman: I have a letter that I will not read but on which I want detail. A customer of the bank was offered a tracker rate of 3.22% and has refused it. The customer had not had an offer of a tracker rate since the fixed-term period ended in 2010. They have received no official confirmation of being impacted. Is that one of the cases that is outstanding?

Mr. Bernard Byrne: I will be happy to consider any individual case-----

Chairman: Generally speaking, is it 4,000-----

Mr. Bernard Byrne: If my colleagues have got the gist of the question, they should feel free to answer.

Mr. Jim O’Keeffe: From what the Chairman describes, it sounds like that the customer is among that cohort who were never on a tracker rate.

Chairman: When they refuse the offer, what happens?

Mr. Jim O’Keeffe: In the contract, they have the option of a fixed rate. Again, I am talking

a little bit on the lines, to be fair in respect of the contract. If I am thinking of the right contract, I believe the customer has the option of a fixed rate or variable rate if he or she was offered the prevailing rate. If he or she decides not to take the prevailing rate, or if he or she did not come back to the bank at all, he or she reverts to the standard variable rate, SVR. That is what is agreed. If the customer has refused the prevailing rate, he or she selects either the fixed rate or standard variable rate.

Chairman: At some stage after the refusal, however, the bank has to go back to the customer, or the customer has to engage with the bank.

Mr. Bernard Byrne: There is a default position under those contracts of reverting to a standard variable rate. In the absence of agreement, the standard variable rate is the default.

Chairman: But the negotiation can happen thereafter in terms of-----

Mr. Bernard Byrne: We would have to consider the individual cases. With regard to how it works, I do not know whether Mr. Mulhall has anything to add.

Mr. Robert Mulhall: We are always happy to engage with any customer who has a question about his or her contract or about where he finds himself as regards the options. Based on what we know, the details given seem to indicate the most likely scenario we are dealing with.

Chairman: May I go back to a question I asked on the last occasion and on which I seek clarification? What was the response on the Belfry issue and the investments?

Mr. Bernard Byrne: I cannot remember the specific question. As the Chairman knows, a number of the cases are subject to litigation so we cannot comment. If there was a specific question-----

Chairman: There is an issue over the Belfry investment, part of which is subject to legal considerations. Have the delegates examined this? Obviously, if there are legal considerations, Mr. Byrne will not give me his view on it.

We receive correspondence here regarding Belfry, general overcharging within AIB on business loans and so on. When the bank receives a number of complaints in this regard, does it conduct a general inquiry into how its rates are applied? If there is overcharging, does the bank address it? Did the bank examine the Belfry matter? Is there any aspect of it that is not contentious or that will not end up in the legal arena?

Mr. Bernard Byrne: The Belfry case is obviously a specific one associated with an investment product and a leverage product. That was certainly well researched and a certain position has been adopted. It is going through a legal process.

The general position on complaints is that we now have a very active approach. We track individual complaints and try to identify any thematic issues that would not have arisen in the past. This is to make sure we understand, where there is a series of complaints on a topic, the root cause and whether there is an issue such as the one the Chairman is talking about.

Chairman: Is that a change within the bank?

Mr. Bernard Byrne: Yes.

Chairman: On the issue I raised the last day, concerning the number of companies regis-

tered, including Allied Irish Banks plc and Allied Irish Banks, plc – and the cases before the courts, is there any one entity that takes charge of all of that? Is there a misunderstanding somewhere? When the Government gave the bailout, for example, what bank did it give it to? What company or vehicle is used to go to court? Is there an overarching company that captures all this? Does each separate entity brings the customers to court over differences?

Mr. Jim O’Keeffe: I will address it in two parts, if I may. An issue has been raised regarding the main company name, which is Allied Irish Banks, plc. In a small number of cases — one can imagine the volume of cases — the comma was left out. I will return to the question of the other entities in a moment. What happens when the comma is left out? From the bank’s perspective or from a litigation point of view, it is an error. When the bank goes to court, there is first a request that the change be made. The court satisfies itself that the debt is owed, that it is owed to the appropriate entity, that the issue is, for all intents and purposes, a clerical one, and that the bank is not trying to create a situation whereby the debt would be owed to a different entity. In the cases that I have looked at, the court gets to that remedy in a reasonably straightforward fashion, moves on from that point and is able to deal with that because it is able to satisfy itself that this money is owing to the entity *in situ*. We have multiple entities in the group. Part of that was due to the merger of EBS in 2011. My colleague would have talked through the volume of companies at the last meeting but I will address the different legal entities. We will have EBS itself as an entity, EBS Mortgage Finance and AIB Mortgage Bank, where some of the mortgage loans are domiciled and therefore legal cases are taken under those legal entities. The specific issue with the comma, as my colleague would have spoken about at the last meeting, arises in the instance that I highlighted.

Chairman: What about the other entities, such as the AIB mortgage entity? The loan is taken by the customer from one of these entities. Should there be a failing on the side of the customer which the bank pursues, that entity pursues it. Is that correct?

Mr. Jim O’Keeffe: Yes.

Chairman: It is not any other entity?

Mr. Jim O’Keeffe: Yes. Unless, as I described, because the Chairman may be referring to a specific case-----

Chairman: That is an error, is it not?

Mr. Jim O’Keeffe: If, for any reason, it was not the entity where the loan is domiciled, that could be the cause of an error. I have not seen any of those to date but I have seen a small number of cases whereby the comma was deleted in error.

Deputy Michael McGrath: I have a few additional questions on the tracker issue. Taking up Deputy Doherty’s suggestion, will AIB provide a *pro forma* mortgage contract in respect of the prevailing rate issue? It would be a typical redacted contract which deals with the clauses 3.2 and 3.6, and the letter of offer with customer details redacted. If there are other variations which represent significant cohorts within that overall cohort, then that should be provided as well. When Mr. Byrne was before the committee last month to speak on a different issue, he made remarks about the State’s shareholding in the bank. They were interpreted as encouraging the State to sell additional shares in AIB. The share price is approximately €5.62. The market capitalisation of AIB is at approximately €15.2 billion. Would that be correct?

Mr. Bernard Byrne: It is close.

Deputy Michael McGrath: Give or take. The initial public offering, IPO, share price was €4.40. The share price is up by €1.22, approximately 28%, since the IPO. Is that correct?

Mr. Bernard Byrne: Yes.

Deputy Michael McGrath: There were reports in the media of the Minister slapping down what Mr. Byrne suggested here at the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach. Has Mr. Byrne had a discussion with the Minister for Finance about his views on the State possibly selling more shares in AIB, either around the time of that committee meeting or subsequently?

Mr. Bernard Byrne: No. I answered a question which was asked at the time about my perspective on where the market was and where AIB was in the market. That is what I answered. I read the detail of the comments that were made and I am not sure that I would have the same interpretation, but fundamentally I was expressing a view about where the bank is and where the markets are. I have not expressed any different views since then. I still think the markets are good. We can see that. It is not a unique insight on the position the markets are currently in. I cannot make any comment about the trading position of the bank right now other than to refer back to our December statement which said that we expect to deliver close in line with market expectations. That is as much as I can tell the Deputy about any trading issues until we release our results. I have not had a conversation with the Minister.

Deputy Michael McGrath: Has there been contact between the bank and Department on that issue?

Mr. Bernard Byrne: As we said at the last meeting, it is ultimately very clear that the decisions for any action the Minister and Government might take are for them to make. That is still absolutely the case.

Deputy Michael McGrath: I will ask Mr. Byrne about loan portfolio sales to the extent that he can answer in a closed period. What are AIB's plans for the sale of further loan portfolios in the period ahead?

Mr. Bernard Byrne: The update would not be any different from the last time that we had this conversation which is that, overall, we have a programme to normalise our non-performing exposures, NPE, at the back-end of 2019. That is our commitment. It is a public position. We are working through that. The majority of what we do is through individual case-by-case restructuring activity, but we have kept the issue of portfolio sales open. I might turn to my colleague, Mr. O'Keeffe, for any comments he would like to make on it but we do not have any update on that position at this stage other than to say that we are aiming for the target set for the end of 2019. We are making good progress, which is what we said in the trading statement, across our overall non-performing exposures, which is obviously helped by the position of the economy. Increasing employment and increasing asset values make it easier for customers. That is all progressing well and is indicated on our statement.

Deputy Michael McGrath: What is the quantum of non-performing loan, NPL, reduction that AIB is required to achieve by the end of 2019?

Mr. Bernard Byrne: The general perception of where that needs to get to is for between 5.4% and 5.7% of the loanbook to be in a non-performing exposure category. It is probably twice that, approximately €3 billion, if put in terms of overall positions. We have come from €30 billion down towards €7.8 billion over the last number we have declared, so we have car-

ried out a huge amount. The next stage is much more modest by comparison and we continue to work through that quite positively.

Deputy Michael McGrath: Is the €3 billion the amount in excess of the target?

Mr. Bernard Byrne: That is the nominal value.

Deputy Michael McGrath: Is that the overall or excess?

Mr. Jim O’Keeffe: That is the overall position which we expect to get to at that point.

Deputy Michael McGrath: To get it down to €3 billion?

Mr. Jim O’Keeffe: Between €3 billion and €4 billion, depending on the size of the balance sheet at that point.

Deputy Michael McGrath: What is it currently?

Mr. Jim O’Keeffe: Our impaired loans are currently €7.8 billion, as we last reported them. At that point, we were also reporting on performing exposures of €12.1 billion. Under the ECB definition, there is an additional cohort of loans that comes in under the NPE definition.

Deputy Michael McGrath: So AIB is required to reduce its non-performing loan exposure by between €4 billion and €5 billion in the next two years?

Mr. Jim O’Keeffe: That is correct.

Deputy Michael McGrath: Realistically, how much of that can AIB achieve by restructuring and working with individual customers? How much of it needs to be achieved by portfolio sales?

Mr. Jim O’Keeffe: Right up to the point at which we transact any portfolio sales, we are open to engagement. We highlighted to the committee previously that we continue to have our full team of approximately 1,500 people in place, working with customers in difficulty to find solutions. While we have looked at that, we will need to execute loan portfolio sales. In general, we have absolute capacity to work with customers who come forward to us to work with us. As we work towards that eventual position, we will determine what level of loan sales need to take place. During 2017, while we are in a closed period, we continued to see really good and improving engagement with customers. The Deputy will have recently seen that we announced new measures relating to our family home portfolio and mortgage-to-rent, which we have seen good performance with. We are reaching out across the portfolio to find other solutions to try to engage with customers so that we can bring that to a solution in a restructuring manner.

Deputy Michael McGrath: What is the latest position on Project Redwood?

Mr. Bernard Byrne: We do not comment on individual projects reported in the media.

Deputy Michael McGrath: Even to the extent that that involves residential and non-residential-----

Mr. Bernard Byrne: What we have said, which is consistent with the statement from when we met in September, is that our overall approach has been to back-end and look in that context at anything associated on the residential portfolio side. That approach is still consistent.

Deputy Michael McGrath: Picking up on Senator O'Donnell's questions, there was an article in *The Irish Times* on 10 January of this year. AIB sues more than twice as many borrowers as Bank of Ireland. It was based on an analysis of High Court cases and looked at summary judgment records. It stated "AIB has scaled back its use of the hawkish "summary judgment" debt recovery tactic, but remains, by far, the Irish lender most likely to sue its customers in the High Court, according to an analysis of official records by *The Irish Times*." Court records show that in 2017 AIB applied for summary debt judgments on 755 occasions, down 37% from the 2016 level. In 2016, AIB was four times more likely to apply for summary judgments than Bank of Ireland which in 2016 sought just over 308. The evidence which is based on hard facts - actual court filings - seems to be that AIB is the most aggressive bank in pursuing SMEs and does so in an adversarial, litigious manner, namely, going to court to get summary judgments which then in some ways narrows the capacity to enable an agreement to be reached.

Mr. Jim O'Keeffe: I appreciate the Deputy's reference to the article to which he referred. I will not comment on Bank of Ireland's position, but it is clear when one looks at the balance sheets and the scale of the issue that faced AIB in dealing with non-performing loans - it continues to be the case - that they are of a different quantum. That accounts for some, if not all, of the comparison to which the Deputy referred. It also accounts for the fact, as he articulated, that the number was significantly down on the figure for 2016. When one looks at the level, we had more than 5,000 restructures last year on the non-mortgage loan side and *circa* 5,000 restructures on the mortgage loan side. We continue to work right alongside that level of activity. All of the solutions available to customers prevent us from ultimately having to go down the legal route. To come back to the discussion we had on loan sales, we really encourage people to come forward and engage because the legal route is the route of last resort that we want to pursue.

Deputy Michael McGrath: It is still a very significant number. When the bank obtains a summary judgment against an SME, what happens then? What prospect is there of an agreement being reached to avoid repossession?

Mr. Jim O'Keeffe: When we receive a summary judgment, we are at the point of executing it and it could involve the repossession and disposal of assets. At that point we still engage with customers and continue to engage if customers come forward and seriously want to do so. It is unfortunate that at times we must reach that point before there is real engagement, but we remain open as we move through the process. As we see it, when we reach that point, in a lot of cases there is still an opportunity to engage, but for whatever reason the customer at the other end who owns the business is not willing to do so.

Deputy Michael McGrath: What does Mr. O'Keeffe foresee lies ahead in 2018?

Mr. Jim O'Keeffe: In terms of the quantum of cases going through the legal process.

Deputy Michael McGrath: What is the landscape?

Mr. Jim O'Keeffe: We have been successful in getting the message through that we are open. We stated when we were discussing it that we had been open for a considerable period to writing down debt. We are realistic in that regard. As we said, when customers come to us and want to solve the debt problem, we have options available. We have created a unique structure for putting in place compromise debt arrangements where we split a loan into three parts in order that we can create a warehouse part and if the performance of the other notes works, we can write off that portion of the debt. That process is working well for us. With the come-back

in the economy, we are seeing a consistent level of restructuring and an appetite to engage, both at customer and adviser level. I mentioned the numbers. That is what we encourage because if there is engagement, it avoids us having to take the legal route which we have to do at a point in time to be fair to everybody. One should also remember that at this stage we have restructured for more than 25,000 customers. To be fair to them, they came forward and engaged with us. They engaged in an compromise and got on with the business. To be fair to them, we must also make sure we take the appropriate action at the other end.

Deputy Michael McGrath: How can Mr. O’Keeffe reassure people that the bank is consistent because customers see high profile cases reported on in the media in which millions of euro and sometimes tens of millions of euro are written off by the bank and believe they are being pursued right through the courts system, ending up with a judgment and the sheriff being involved? Surely in cases in which there is full disclosure by the borrower, there are up-to-date valuations on file and there has been a thorough assessment made, it is far better to deal with them in a non-adversarial and non-litigious manner and reach an agreement, even if it involves writing off debts rather than securing an asset in a very messy way that leaves a sour taste in the mouth?

Mr. Jim O’Keeffe: Again, if there are specific cases, we are very open to dealing with them if the Deputy wishes. However, for the sake of consistency, what we look at is affordability for the customer when he or she comes forward and we see the elements of the debt that can be addressed by him or her. We then make decisions on what it is possible to write off and, as we discussed, the elements of non-core assets that could be sold in that regard. I am very confident about the approach we have taken. We have had several reviews of our consistency. We work a very consistent policy and protocol to make sure there is consistency for borrowers.

Chairman: Will the delegates comment on the recent presentation made by Mr. David Hall of iCare?

Mr. Bernard Byrne: I will ask Mr. O’Keeffe to respond.

Mr. Jim O’Keeffe: I think very shortly after we were last before the committee we announced an enhanced mortgage-to-rent scheme with Mr. David Hall of iCare which was embracing the changes made to the overall mortgage-to-rent scheme. As members know, while the mortgage-to-rent scheme is of noble intent, it had not delivered in a lot of cases over a five-year period. In fact, at the point when we launched the scheme with Mr. Hall, a total of 260 cases had been completed over a five-year period. The level of progress has been good. For AIB, at this point we have completed a financial questionnaire in 325 cases, about 50 of which have been identified as suitable for the scheme, while 50 others will be suitable for other forbearance solutions. We are working through the remainder. I also understand iCare has a number of cases outside AIB in which people are coming to it. The pipeline of customers looks very good. We have had very extensive engagement in recent weeks with our customers in the legal process to encourage customers to come forward to see whether this solution would be appropriate for them and the response has been positive.

Chairman: We had the presentation by Mr. David Hall. His company covers loans other than ones with AIB. Is Mr. O’Keeffe saying that, in the context of AIB, even though the company might have cases that are at court level, using iCare is a solution, it will encourage people to go for that option?

Mr. Jim O’Keeffe: Not only that, but in the last couple of weeks we issued letters to almost

3,000 customers, many of whom are in the legal process, asking them to come forward and engage with us on the option of availing of the mortgage-to-rent scheme. If customers express an interest, their cases will be passed on in due course to iCare.

Chairman: Is it the case that as customers respond to AIB, their cases are passed on to iCare?

Mr. Jim O’Keeffe: Exactly. There are certain data protection and customer engagement pieces that we need to work through, but to be fair, the co-operation with Mr. David Hall’s organisation has been positive.

Senator Gerry Horkan: I thank Mr. Byrne for his opening statement and all of the delegates who have participated. I apologise for having to leave temporarily, but there was a vote in the Seanad. However, I was following the debate and a lot of the questions I might have asked have been dealt with. The delegates should indicate if the following question has been asked as I am not sure if it has.

On the level of compensation paid, we have seen average figures quoted, but what was the highest figure paid? I know that there are average figures, but how much money did some people get back? What was the highest level of redress?

Mr. Bernard Byrne: As we said, there are clearly different tiers, if I can call them that, in terms of the impact on individual customer sets. At the lowest level, it is effectively an advisory payment.

Senator Gerry Horkan: That is the €1,000 plus the €615-----

Mr. Bernard Byrne: It could be even lower. We have talked about €1,000 as a particular issue. For some customers, it might be a very small amount. At the upper end, it is obviously the homes lost issue, which we have talked about, and the average in respect of that is €146,000 compensation. That is an average, but it is a spectrum to give the Senator an indication.

Senator Gerry Horkan: What was the highest amount of redress? If the average is €146,000, some of them are at €70,000 or €80,000. What was the highest? Was it €500,000, €1.5 million-----

Mr. Bernard Byrne: It was €300,000.

Senator Gerry Horkan: So €300,000 is the highest amount of redress that any customer got. Did that relate to a home that a customer lost?

Mr. Bernard Byrne: I will hand over to Mr. Kinsella.

Mr. Tom Kinsella: Yes. That was in respect of a lost home.

Senator Gerry Horkan: Is that a pure redress amount or is compensation included?

Mr. Tom Kinsella: That is a compensatory amount.

Senator Gerry Horkan: The highest amount of compensation was not €300,000.

Mr. Tom Kinsella: It was. That is pure compensation.

Senator Gerry Horkan: That is pure compensation. What was the level of redress in re-

spect of compensation?

Mr. Bernard Byrne: In general, with the compensation in the cases that we are talking about, it almost inverts. So the level of compensation is generally multiples of the amount of redress.

Senator Gerry Horkan: We saw percentages of compensation at approximately 15%, 20% or 25%. Is Mr. Byrne saying there are some compensation payments that are multiples of the redress?

Mr. Bernard Byrne: For customers we are talking about in terms of a lost property, the amount of compensation, because I have described the process by which we do compensation - in other words we calculate the value of the home difference, we calculate the value of the future trackers, we are calculating a lot-----

Senator Gerry Horkan: Was the opportunity cost associated with the house price included?

Mr. Bernard Byrne: Exactly.

Senator Gerry Horkan: For someone who lost a house in 2012 and was trying to buy it back in 2016-----

Mr. Bernard Byrne: That is included.

Senator Gerry Horkan: ----- there was an increase in property values in the interim.

Mr. Bernard Byrne: The redress amount might be quite small relative to the compensation amount, whereas at the other end it is the other way round generally; the redress amount might be higher than the compensation.

Senator Gerry Horkan: That was a point I made last week. I am sure someone in the AIB team watched our interaction with representatives from the Central Bank. Someone who fails to make a payment to the Revenue is likely to incur penalties that are multiples of the amount owed. However, here the compensation was 15%, 20% or 25%. For the person who got the highest compensation of €300,000, what was the redress amount?

Mr. Tom Kinsella: I do not have that to hand at the moment, but the redress figure would have been considerably lower than €300,000.

Senator Gerry Horkan: Would have it been €250,000 or €80,000?

Mr. Tom Kinsella: I will confirm it separately, but I think it was under €100,000.

Senator Gerry Horkan: In this case, therefore, the person got a multiple of in excess of three times the redress amount.

Mr. Bernard Byrne: At least.

Senator Gerry Horkan: Did that particular ratio of redress to compensation only apply in respect of repossessed homes?

Mr. Bernard Byrne: As we said, at the upper end, that is the case. The ratio generally works its way down. For example, in the case of those on a higher incorrect rate for a short

period, when they have been addressed, the compensation, relatively speaking, would be small.

Senator Gerry Horkan: Was it 14 properties?

Mr. Bernard Byrne: We have said up to 14 properties. We have not concluded the entire-----

Senator Gerry Horkan: We have not touched on this area before. Let us talk about the highest amount of compensation somebody would have received - or redress and compensation combined - and then we can talk about the split. While somebody with an incredibly expensive property or a very large property might not have lost it, the amount of redress and compensation could have been very significant albeit they had resources to sustain themselves one way or another through all this overcharging.

Mr. Bernard Byrne: I do not have that statistic to hand. The statistics we are talking about are obviously in respect of the homes piece. We have not disclosed those. When we get to the end of the programme, some of those statistics will emerge and we will be in a position to talk about what they are, but they vary.

Senator Gerry Horkan: I think it is important for us to understand the level of pain and suffering because averages can hide a lot.

Mr. Bernard Byrne: Sure.

Senator Gerry Horkan: If the average is €25,000 and 100,000 of those are €1,500 or smaller amounts, with the 80-20 rule, 20% of people might be feeling a lot of pain and the other 80% might not be feeling so much. It would be helpful if AIB were able to give us those figures.

Mr. Bernard Byrne: We can come back.

Senator Gerry Horkan: This is not a question I am asking exclusively; AIB happens to be the first. I will be asking exactly the same of all the other banks if somebody else does not get to the question before me on the next occasion. The committee will want to see those figures in as much detail as possible.

The bank is to provide us a list of the 30 groupings. I ask Mr. Byrne to give us an idea of the diversity. I know there are three main groups. However, the 30 groups seems to involve an awful lot of different kinds of customers who are all dealing with tracker mortgages.

Mr. Bernard Byrne: Sure. We have identified - even in the course of this conversation - a few. I will remind the Senator of those and then ask Mr. Kinsella to think about some of the others. Mr. Mulhall talked about a set of EBS customers who signed up to an offer on one basis, but - in error - they were posted a set of terms and conditions that gave them a tracker-type offer. They signed up on one basis, which was fixed; we have put them on a tracker rate.

Senator Gerry Horkan: In this case, AIB is compensating them for its own mistake in putting them on the wrong produce in the first instance.

Mr. Bernard Byrne: Correct. That is one group-----

Senator Gerry Horkan: However, it was AIB's mistake.

Mr. Bernard Byrne: Absolutely.

Senator Gerry Horkan: Rather, it was EBS's mistake and AIB is now responsible for it.

Mr. Bernard Byrne: There are roughly 500 customers in that one. We have talked about the price promise piece, which effectively guaranteed a margin - I think it is 1.5 percentage points - above the ECB rate. That is a separate group of about 600 customers.

Mr. Robert Mulhall: It was nearly 1,000.

Mr. Bernard Byrne: Does Mr. Kinsella want to give some other examples?

Mr. Tom Kinsella: We have one where a change of borrower on the same mortgage - typically a couple splitting up - resulted in the loss of a tracker. We are now restituting them back to their historical tracker mortgages. That is approximately 200 customers.

There is also what we term "tracker not applied to top-up". Here, a person with a tracker mortgage applied for a top-up and the tracker rate should have been applied to that top-up but it was not. We have restituted the top-up to that.

Senator Gerry Horkan: I might stop Mr. Kinsella because we could end up spending all my time talking about the 30 groups. The witnesses have agreed to send us the list of those 30.

Mr. Tom Kinsella: Yes.

Senator Gerry Horkan: I ask about the 4,000 customers who will get the €1,000 plus the €615 for independent advice. Is there a panel of people to which they have to go? Is the bank writing them cheques for €1,615 or is it €1,000 and they have to bring in receipts for-----

Mr. Bernard Byrne: They get the amount of money. It is up to them as to whether they do.

Senator Gerry Horkan: Those 4,000 customers are getting €1,615 and if they do not want to spend €615 on legal advice, they can do whatever they want with it. If they want to spend all the money and more on independent advice, it is up them.

Mr. Bernard Byrne: Yes.

Senator Gerry Horkan: Is the reason it has not been done yet that they have only just been identified or agreed to?

Mr. Bernard Byrne: Correct, in December.

Senator Gerry Horkan: That happened under a level of pressure from the Central Bank.

Mr. Bernard Byrne: It was absolutely in dialogue with the Central Bank at that stage, which we had not-----

Senator Gerry Horkan: Initially the bank would have regarded those as people it would not have been considering.

Mr. Bernard Byrne: Within the framework. The main discussion with the Central Bank was not disagreement on the treatment; it was including them within the framework and thus the compensation payments.

Senator Gerry Horkan: Okay.

Chairman: The Senator's time is up.

Senator Gerry Horkan: That was the 4,000. I am about to move on. The 900 constitute the final cohort. What is the reason they are still-----

Mr. Bernard Byrne: I ask Mr. Mulhall to take that.

Mr. Robert Mulhall: In that instance, the contract for those customers was quite clear; they do not have a tracker option on the expiry of their fixed period. However, there was documentation as part of the statements relating to those customers which intertwined the use of the terms “tracker” and “variable mortgages”. So they were offered a variable rate or a fixed rate when they finished their fixed-rate mortgage. As a result of that confusion around the statement, these are judgment calls but we erred on the side of the customer to include them in the programme.

Senator Gerry Horkan: At this stage.

Mr. Robert Mulhall: Yes.

Senator Gerry Horkan: Those 900 customers have not been compensated yet because the bank would have had a view until fairly recently that they were not part of their initially identified tracker-affected people. The Central Bank had a different view and AIB has come to an agreement whereby it is now giving them compensation and redress. In the case of the 4,000, it is not enormous amounts of money relative to the €1 billion we were talking about with the Central Bank. I accept that AIB’s provision is still €190 million. With 4,000 getting €1,600 each, it will not be an enormous amount of money. I take the point that small mistakes by a large amount of people can still be a lot. Relatively speaking, it is not a gigantic amount of money in the context of everything that is going on. AIB has 500 staff doing this. Are they all contracted staff?

Mr. Bernard Byrne: We touched on this earlier. It is roughly two thirds internal staff and one third brought in.

Senator Gerry Horkan: Will the bank will find roles for the two thirds of internal staff who are doing this at some point or will there be a big lay-off?

Mr. Bernard Byrne: The programme is still running and they came from other parts of the business to do that.

Senator Gerry Horkan: If 95.5% of the first 3,509 are complete, what is left to do? Some may appeal, and I understand they have a year to do so.

Mr. Bernard Byrne: They have a year from when they get the letter.

Senator Gerry Horkan: They have a year from when they get the letter and the cheque, so we will not know until October or even December of this year, depending on when the cheques went out. Many will leave it until the last moment to fire something in, meaning it could take longer. There is not that much work left in respect of the original people.

Mr. Bernard Byrne: There are the two groupings the Senator mentioned, and we will need to progress those.

Senator Gerry Horkan: These are the groups of 4,000 and 900.

Mr. Bernard Byrne: Yes.

Senator Gerry Horkan: Is there much to do in respect of the 4,000 other than to give them

all €1,615?

Mr. Bernard Byrne: Customer identification is the first thing to do and we need to make sure we have captured all those customers. We did not have them in the framework and that is why we did not conclude this in time. The process of compensating these is simpler than for the others. The group of 900 will effectively be dealt with over the course of the final two quarters. The division as between this and the work in the first and second quarters is roughly 50:50.

Senator Gerry Horkan: A total of 4,000 at €1,500 each would amount to €6 million and will bring up the bank's provision but there remains a provision of between €50 million and €60 million.

Mr. Bernard Byrne: The provision commentary involves a financial disclosure for the period up to quarter 3, so it is a September number. The numbers have been updated since then and we do not know exactly what it will be because we have not finished the work yet. We will get through it in quarter 2 and we will then be able to definitely conclude where we sit in this respect.

Senator Gerry Horkan: The final part of the jigsaw is those who appeal.

Mr. Bernard Byrne: Correct.

Senator Gerry Horkan: The bank will not know finally how many appeals are in the pot until 12 months from the date of the last cheque that was issued, which will be by June of this year.

Mr. Tom Kinsella: It will be 12 months from June.

Senator Gerry Horkan: Mr. Byrne is happy that the provision of €190 million is sufficient to cover AIB's costs.

Mr. Bernard Byrne: The update we gave to the market was that we are satisfied that the provision we have is materially correct. We have not concluded all the work but any change would not be material in the context of where we are.

Senator Gerry Horkan: The provision of €190 million from 2015 is purely for redress and compensation. It is not for the costs of 500 staff.

Mr. Bernard Byrne: It is to rebalance the accounts for the future.

Senator Gerry Horkan: What is the total cost of this saga when one includes the 500 staff at certain salaries? It was said that this will cost €1 billion but a lot of that money is money that should not have been in the hands of the banks in the first place. The money that was taken from people should not, in many cases, have been taken from them. How much is involved in staff costs?

Mr. Bernard Byrne: We have not worked that out but when we get to the conclusion of this we will be able to do so.

Senator Gerry Horkan: I thank Mr. Byrne for telling us in his own words how the problem arose. Up to now, we have not had a narrative other than that every bank made the same mistake at the same time. Hopefully, by June Mr. Byrne will be back to give us an update of where we are and all customers will have received and cashed their cheque.

Is the average 25% compensation figure Central Bank-led?

Mr. Bernard Byrne: No. We submitted our compensation to the Central Bank in 2016, as each individual institution had to. We derived it by looking at other models and at Financial Conduct Authority issues in the UK, as well as at the circumstances in this case. We had a dialogue with the Bank but it does not agree or approve it, though it notes it and may challenge it in certain respects. We have been redressing customers since December 2016.

Senator Gerry Horkan: The document is not published.

Mr. Bernard Byrne: It is not.

Senator Gerry Horkan: Is Mr. Byrne able to share it with us?

Mr. Bernard Byrne: No. We can give the principles of redress but we have not disclosed them at this point in time.

Senator Gerry Horkan: Could you give us the principles underlying the compensation process? We were told those who lost their houses received a multiple but those who did not got something else. Can the witnesses give us some idea as to why the rates being paid are such as they are?

Mr. Tom Kinsella: The first step on the journey to putting the wrong right for customers was to stop harm, which meant we rectified any open account. Then we entered into a process of rebuilding that account on a line-by-line basis. The framework requires that we have to reset the account so that it is back in the position it should have been in. We did that twice to make sure we got it right and then we passed it on to KPMG, who assured it for us. Later in the process it was assured again by EY, on behalf of the CBI. We then refund overpayments to the customer and give the customer a time value of money on the overpayments, which worked out at about 6% on average. In line with that, we provide compensation based on a percentage of the interest overcharged. We have four tiers of compensation, with 85% falling within tier 1, these being performing customers who were never in arrears. The figure for these is 15%. The next tier is customers who might have been in the legal process at some stage, who get 22% and the next set, where the property may have been sold but the rate was not causal, also get 22%. Finally, the most seriously impacted customers, where the property was sold and the rate was causal, got a 30% compensation level. In the case of the last group, we also compensate for the future value of the tracker and any uplift in the value of the house since it was sold, and we write off any residual debt refund and any payments made on it. We make a €50,000 incremental payment on top of that and finally, where applicable, we offer them the opportunity of a new tracker mortgage based on their old historic rate.

Senator Gerry Horkan: Can Mr. Kinsella send us a briefing note with an outline of his reply? It would be useful to ask the other banks the same question.

Deputy Pearse Doherty: The report will come out later this year but can we take it that the Government salary cap of €500,000 has not been breached in AIB?

Mr. Bernard Byrne: There has been no change.

Deputy Pearse Doherty: What is the legal status of the cap? Is it just an understanding? Is it enforceable?

Mr. Bernard Byrne: It is part of the placing agreements that were established in 2009 and

2010.

Deputy Pearse Doherty: How long will it continue for and how can it be lifted? Has AIB requested that it be lifted?

Mr. Bernard Byrne: The issue in respect of the placing agreements sits with the Minister.

Deputy Pearse Doherty: Has AIB requested a change?

Mr. Bernard Byrne: Which?

Deputy Pearse Doherty: Has AIB requested a change?

Mr. Bernard Byrne: No. We made a statement to the marketplace relating to remuneration. We said that, as the shareholder base developed different expectations over time, we would expect a normalisation to take place.

Deputy Pearse Doherty: The Government lost €800 million in the context of the timing of the IPO. Would that be an accurate statement?

Mr. Bernard Byrne: It is not the way I look at the world. We have to look at the value that exists now. AIB is a valuable asset, to a degree that I do not think people would have expected when this was discussed in 2014. We are at the point where the combination of the value received already and the market value that is implicit in the State's 71% share is in excess of the total amount that the State put in. At that point in time, we would not have collectively thought that this would be the situation in 2018. The value realisation comes from having the listing as opposed to not having it. There is always going to be a point at which the listing process must be undergone. Markets go up and down. I do not subscribe to the idea that there is a straight line process by which value will always grow as a result of market positions.

Deputy Pearse Doherty: I know that. Obviously value can go up and down. How many months ago were the shares sold?

Mr. Bernard Byrne: The sale took place in June.

Deputy Pearse Doherty: Is it not a statement of fact that the investors who bought the State shares are about €800 million better off than they were?

Mr. Bernard Byrne: Yes. As Deputy McGrath mentioned earlier, the market has valued the bank more positively than the general market trend.

Deputy Pearse Doherty: Many of us in this House argued for a postponement, because we expected that this was where it was going. That being said, I will move on to the issue of tracker mortgages. The period to lodge an appeal is 12 months, is that correct?

Mr. Bernard Byrne: It is a period of 12 months from the issue of the letter, I believe.

Deputy Pearse Doherty: What will happen if the courts decide in some of the legal cases that AIB's interpretation was wrong, for example around the prevailing rate issue? I know this is a hypothetical question. Will AIB voluntarily open up accounts to compensate those 4,000 customers, or will it force them to go through the court system?

Mr. Bernard Byrne: We have outlined what we believe the position to be in this respect. I know that the committee has had a similar conversation with the Central Bank about it. We

have gone through a fairly rigorous process with our own set of considerations. The process has been challenged, including by the Central Bank, and we believe the interpretation is correct. I am not going to comment on legal cases which may emerge. If anything were to occur, I would need to see the world as it would be then. I am not going to speculate.

Deputy Pearse Doherty: Has AIB settled out of court in any cases around the tracker issue?

Mr. Bernard Byrne: We have not had legal cases on the tracker issue.

Deputy Pearse Doherty: There has been no out-of-court settlement.

Mr. Bernard Byrne: That is true to the best of my knowledge.

Deputy Pearse Doherty: I wish to discuss the 4,000 customers to whom AIB will write at some stage-----

Mr. Bernard Byrne: Soon.

Deputy Pearse Doherty: -----starting next month, informing them that they are one of the impacted accounts. In that letter, will the bank outline the prevailing rate as calculated by AIB? AIB will be saying to them that they are contractually entitled to a tracker mortgage, but because of the prevailing rate at the time the bank has calculated that they would have been worse off if they had had it. Will the letter state the prevailing rate? Will AIB tell these customers its calculation of the prevailing rate, so that they can make an informed judgment on whether to go to the Financial Services Ombudsman's Bureau of Ireland and challenge that estimation?

Mr. Bernard Byrne: I have not seen the letter that we intend to send. We have not yet written to these customers or scoped the writing of the letter. However, I am happy to take that point into consideration.

Deputy Pearse Doherty: The bank is going to start writing letters next week. It will begin in February, is that correct? There are 4,000 customers involved here. I am sure somebody has considered that. This is a fundamental issue. AIB is making a call to the effect that they would have been worse off if they went on a tracker.

Mr. Bernard Byrne: Yes.

Deputy Pearse Doherty: I presume that the basics of this-----

Mr. Bernard Byrne: The letter will outline-----

Mr. Tom Kinsella: We will outline the issue in the letter, and the customers will then be offered today's prevailing rate.

Deputy Pearse Doherty: Today's prevailing rate. They will be offered the rate of costs today.

Mr. Bernard Byrne: As an option going forward, they will be offered the prevailing rate tracker. For the period from now on, that will be a prevailing rate tracker as calculated today.

Deputy Pearse Doherty: Yes, but the reason-----

Mr. Bernard Byrne: We will describe the issue that arose during that period, as the Deputy

has outlined.

Deputy Pearse Doherty: I know that. However, the reason that these individuals are not being given redress or increased compensation is that AIB has calculated that collectively and individually, they would have been worse off. I presume that the bank has a duty to specify what the prevailing rate would have been when they came off a fixed rate, or when the option was available to them under the terms of the tracker mortgage. I will say this; if the bank does not do that, I think it is in breach of an obligation to provide accurate and full information to the customer. The letters should not say that the bank is awarding a customer €1,000 as they were contractually entitled to a tracker mortgage and the bank denied them this contractual entitlement for the past seven or eight years, only to assert that the bank has internally determined that this rate would have been higher than what the customer has actually paid, but the customer will not be told what rate they should have been on. AIB will have to tell them what that rate would have been.

Mr. Bernard Byrne: As I have said, I have not seen the letter. We have not finalised it. I take on board what the Deputy says, but I cannot do any more than that at this point.

Deputy Pearse Doherty: Perhaps Mr. Byrne can contact the committee and let us know, one way or the other, when a decision is made as to whether the bank will provide this information or not.

I was going to ask the witnesses about iCare. I welcome that initiative. I also welcome the funding of the Ó Cualann Co-Housing Alliance. There are positive things happening there.

However, I want to return to the tracker issue and discuss the cohort of 4,000 customers, as well as the estimated group of 900 customers. When did the Central Bank first engage with AIB in regard to those groups? When did the Central Bank say to AIB that it believed more individuals were affected than AIB acknowledged?

Mr. Bernard Byrne: As we have said in the past, we were making progress on the framework as a whole while we were carrying out assessments of individual customers. As we did that, we made submissions in respect of those groups to the Central Bank. We always said that this was going to be subject to review by EY and the Central Bank. Obviously, the process of engagement with the Central Bank on those groups of customers only took place towards the end of last year. That was when we came to the conclusion on the groups of 4,000 and 900 that we have described.

Deputy Pearse Doherty: Was it the work of EY or that of the Central Bank that identified the 4,000 customers?

Mr. Bernard Byrne: It was the Central Bank's work.

Deputy Pearse Doherty: When was the first time that the Central Bank-----

Deputy Pearse Doherty: EY's work has not been completed, by the way.

Deputy Pearse Doherty: Yes, I know it is ongoing. The Central Bank's work is ongoing as well.

Mr. Bernard Byrne: That is correct.

Deputy Pearse Doherty: When was the first time that the Central Bank alerted AIB of its

belief that there was another cohort of individuals involved, which we know as the 4,000 prevailing rate customers? When was the first time that happened?

Mr. Bernard Byrne: In all of these issues, the Central Bank has engaged with us throughout 2017 as we progressed our thinking around some of these issues. As that particular group was not included in the framework as we were positioning it, the discussion on whether they should be included would have taken place in the latter part of 2017.

Deputy Pearse Doherty: Was that in October or November? Perhaps in August?

Mr. Bernard Byrne: I do not know the precise month.

Deputy Pearse Doherty: Was it before the last time the witness came before this committee? Was the Central Bank challenging AIB before its representatives presented to this committee about the 4,000 customers?

Mr. Bernard Byrne: The position that I outlined to this committee then was to the best of our knowledge at that point.

Deputy Pearse Doherty: At that time, was the Central Bank challenging AIB on 4,000 customers that AIB did not believe were within the scope of the framework?

Mr. Bernard Byrne: No. It is exactly as we said. The framework is never finished until it is finished in the Central Bank and signed off. What we described then was the cohorts that we knew about and upon which we had agreed. We did not say anything else in respect of-----

Deputy Pearse Doherty: I know that. We now have additional information. I will ask the question again. At that time, was the Central Bank challenging AIB on the subject of those customers?

Mr. Bernard Byrne: The thing I know the Deputy wants me to say, which I cannot say-----

Deputy Pearse Doherty: I want Mr. Byrne to say “yes” or “no”. I do not mind, I just want to know.

Mr. Bernard Byrne: The Central Bank’s officials themselves would say that they challenge right up to the point in time that they do not challenge. That is their role. They challenge us all the way through the framework.

Deputy Pearse Doherty: I will tell the witness what I want to get to. I want to get to this point. I want to figure out when the Central Bank started to raise an issue with AIB regarding its belief that there were thousands of customers that AIB were not including in the scope of the framework. I want to know when that started, what resistance AIB offered this argument, and how it eventually came to agreeing on it. Then I want to know how AIB came to agree on the 900. It is not for my benefit personally. People out there want to know. Representatives of the Central Bank came before this committee and were a bit more robust than at their last appearance. They told us how they have hauled AIB over the coals. I want to know if that is true. Was the Central Bank engaging with any of the 900 customers? When did the Central Bank start to engage with AIB on that cohort of individuals?

Mr. Bernard Byrne: All the way through this, we have said that we can only include in the redress programme those customers on whose inclusion we have made a final determination. All the way through this, the Central Bank engages as we go through that process in respect of

individual customer cohorts. It clearly had not agreed a final treatment in respect of the groupings about which we are talking but that does not mean the Central Bank was challenging those groupings and saying that we were wrong in respect of them. One of them, as I have said, which involves 4,000 customers, was not in the framework. Therefore, the debate that arose after the final quarter was around the treatment of those customers and whether they should be in the framework. That was a final quarter activity. I cannot remember the details or the timing around the group of 900 but I am happy to hand over to my colleague on that.

Mr. Robert Mulhall: That was in the final quarter activity.

Deputy Pearse Doherty: The Central Bank only started to raise these issues in the final quarter. Is that correct?

Mr. Bernard Byrne: That is not to say that it was not aware of these issues progressing through the organisation at that point.

Deputy Pearse Doherty: It did not raise them with AIB before that point. Is that right?

Mr. Bernard Byrne: The Central Bank is aware of or sees where we are in these programmes; it knows how we are progressing. That is as much as I can say.

Deputy Pearse Doherty: Can I ask a final question on this? My recollection is that we asked for an outline of the corporate structure of the bank vis-à-vis the number of companies in AIB plc. I am not sure if we ever got that. We have received a great deal of correspondence on these matters-----

Mr. Jim O’Keeffe: I understand that it was sent.

Deputy Pearse Doherty: It was sent. Okay, I will dig that out. How many homes or houses does AIB now have in its possession and what is the arrangement for them?

Mr. Jim O’Keeffe: On each of the other occasions we appeared before this committee, we provided statistics on the set up in that regard. On the most recent occasion, we spoke about 900 homes being in the bank’s possession and that we were working through those with the Housing Agency at that point. Obviously, there is movement in and out in terms of that number as we go through the process. It has come down slightly but we have made significant progress with regard to the initiative with the Housing Agency. We are moving properties into the market on an ongoing basis in terms of sales. In the context of the Housing Agency initiative, we are hoping to agree on somewhere in the region of 250 properties. We have finalised contracts for 246 properties and we expect to close out on around 260 properties with the Housing Agency. As I said on the previous occasion on which we met this committee, that initiative was launched on the basis of a fund of approximately €70 million through the Housing Agency. It was done across all of the financial institutions but we would expect that our close out on that will be north of €50 million. That figure is evidence that we have really embraced that initiative. In addition to that, in recent weeks we have re-engaged with the Housing Agency and provided a further list of over 250 houses and an additional list of 150 will go to the agency in the next week or two.

Deputy Pearse Doherty: I ask Mr. O’Keeffe to explain that to me again. In the middle of a housing crisis, AIB has 900 empty homes across the State. The Housing Agency is going to take on approximately 246 of those homes and house people who are in desperate need. Why did AIB not provide a list of all 900 properties to the Housing Agency? How come another list

of 250 homes is now being provided?

Mr. Jim O’Keeffe: As the Deputy can imagine, with that stock of houses, there are properties moving in and out of it all of the time. At one point, we provided a larger list to the Housing Agency. The initial list that was provided contained over 500 properties. Indeed, in the initial days we identified 700 properties that may have been suitable but because of various criteria laid down by the Housing Agency for social housing, that list was reduced.

Deputy Pearse Doherty: Okay. Actually, it is not okay in my opinion. The fact that a State-owned bank has 900 properties lying vacant is unforgivable. I do not know who is at fault here, whether it is the Housing Agency, the Department of Housing, Planning and Local Government or AIB. That we cannot get three State actors, as well as the Departments of Finance and Public Expenditure and Reform, to work together in the middle of a housing crisis is sinful. It reminds me of what happened during the Famine when we exported food while Irish people starved. We have a housing crisis, with significant numbers of people homeless. We meet them all the time because they stay in the same hotels that many Deputies stay in. It is shocking to think that AIB, a bank into which we put billions, has 900 empty houses. The people who are homeless now put money into the bank. It is next to unforgivable. I raise this every time we meet and the figures are actually increasing. The number of houses that the bank has in its possession is increasing.

Mr. Jim O’Keeffe: I think all stakeholders involved understand the challenges. From AIB’s perspective, as I have outlined, we have recognised our position and the need for us to play a role. We have gone to real lengths to make sure that the project to mobilise that was significant. There are wider issues around the criteria for the houses and the funding available but the numbers, in terms of what we have done to date, are significant. Obviously, we have to do more and are doing that. We are working with other agencies who may be able to take some of those properties.

Deputy Pearse Doherty: I have two final questions for Mr. Byrne. Did AIB carry out a review or did its board commission a report into the reasons so many of its customers were taken off tracker mortgages? I am not talking about what he referred to in his opening statement in terms of the examination. Was a report prepared by AIB or commissioned by the board that identified how this actually happened?

Mr. Bernard Byrne: What I have described here is the way we have looked at it. We have also gone through the details of each individual cohort to understand where they were at and we have carried out other work associated with that but not in the way the Deputy has described.

Deputy Pearse Doherty: The board never asked for a report as to how this could have happened. Is that right?

Mr. Bernard Byrne: This is a standing item in respect of the board since -----

Deputy Pearse Doherty: Yes but that is the examination, which has absolutely different terms of reference. I am talking about how the bank, through its governance structures, could have allowed this to happen, where almost €100 million was wrongly taken from customers. This will cost the bank up to €190 million but the board has never asked for a report.

Mr. Bernard Byrne: The approach we have taken has been to go through each individual grouping and on a monthly basis to go through the programme to determine where it is at and to learn the lessons from each of those as we go through them. We have done a look back exercise

in terms of the processes and procedures that we have in place-----

Deputy Pearse Doherty: Did the bank go back through the board's minutes?

Mr. Bernard Byrne: Yes.

Deputy Pearse Doherty: If I had access to the minutes of AIB's board meetings from 2008 to 2015, before the examination began, would I see discussions about or references to tracker mortgages being denied to customers?

Mr. Bernard Byrne: What I have described is the way it unfolded. That is what the Deputy would see in the minutes.

Deputy Pearse Doherty: Would I see that?

Mr. Bernard Byrne: What the Deputy would see in the minutes is consideration consistent with how I have described it.

Deputy Pearse Doherty: Would I see references to the bank denying AIB customers tracker mortgages at that time if I had access to the board's minutes?

Mr. Bernard Byrne: We can go to and fro on this but I have told the Deputy how we approached it. I have told him how-----

Deputy Pearse Doherty: Is it not the case that it was raised at board level?

Mr. Bernard Byrne: No. I have described exactly-----

Deputy Pearse Doherty: It was not raised at board level. Is that what Mr. Byrne is saying?

Mr. Bernard Byrne: I have given the Deputy an answer.

Deputy Pearse Doherty: No, Mr. Byrne has not given me an answer.

Mr. Bernard Byrne: I have-----

Deputy Pearse Doherty: No, Mr. Byrne has not given me an answer.

Mr. Bernard Byrne: The Deputy just does not like the answer.

Deputy Pearse Doherty: Was it raised at board level or not? I will accept Mr. Byrne's answer.

Mr. Bernard Byrne: I have said that any raising of the issue at board level is consistent with how I have described it here. I have described it here and have talked about the fact that during that period there were, in certain instances, tracker issues that would have appeared as part of, for example, an update in respect of an Ombudsman case which found in favour of the bank. It was very low level, in terms of the position associated with it so the Deputy will find references to it but nothing in terms of the minutes is inconsistent with or different to the way I have described it here.

Deputy Pearse Doherty: That does at least give us information that the board, at a different time, was aware of complaints by customers regarding tracker mortgages. It has now been found that the bank erred in those cases.

Mr. Bernard Byrne: It is as I describe it.

Deputy Pearse Doherty: The final question I want to ask Mr. Byrne relates to an authorised person under section 39 of the Companies Act. Has AIB ever considered using that section, which would give independent third parties clarity as to who can actually bind AIB in cases in a court of law.

Mr. Bernard Byrne: I am not familiar with the details of that section so I would not be able to give the Deputy a good answer on it.

Deputy Pearse Doherty: I ask Mr. Byrne to revert to the committee on that.

Chairman: That concludes our meeting. I thank Mr. Byrne and his colleagues for attending.

The joint committee adjourned at 10 p.m. until Thursday, 25 January 2018 at 9 a.m.